



UNITED STATES COPYRIGHT OFFICE

## **Long Comment Regarding a Proposed Exemption Under 17 U.S.C. § 1201**

**Reply Comment on Proposed Class 2  
Audiovisual Works—Accessibility**

of

**Association of Transcribers and Speech-to-text Providers (ATSP)  
Association of Research Libraries (ARL)  
American Library Association (ALA)  
Association of College and Research Libraries (ACRL)  
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## Discussion

The Association of Transcribers and Speech-to-text Providers, the Association of Research Libraries, the American Library Association, the Association of College and Research Libraries, and the Association on Higher Education And Disability respectfully submit these reply comments in response to comments in favor of and objections to the proposed Class 2 exemption for disability services professionals to make video programming accessible from the anti-circumvention provisions of Section 1201 of the Digital Millennium Copyright Act (DMCA).<sup>1</sup>

Proposed Class 2 would permit:

[C]ircumvention of TPMs for motion pictures by ‘disability services offices, organizations that support people with disabilities, libraries, and other units at educational institutions that are responsible for fulfilling those institutions’ legal and ethical obligations to make works accessible to people with disabilities,’ ‘where circumvention is undertaken for the purpose of making a motion picture [as defined in 17 U.S.C. § 101] accessible to people with disabilities, including through the provision of closed and open captions and audio description.’<sup>2</sup>

The record strongly supports granting an exemption for disability service professionals to circumvent the technological protection measures on video programs when those works lawfully arrive in their offices in an inaccessible format.

We have met and surpassed our burden of proving that the proposed exemption is not only warranted but necessary. Our initial long form comment presented factual and legal arguments demonstrating the acute need for this exemption.<sup>3</sup> Further, the records from past rulemaking proceedings reflect the overwhelming support—from rightsholders, consumers,

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<sup>1</sup> See generally 82 Fed. Reg. 49,550, 49,560 (Oct. 27, 2017) (“2017 NPRM”), <https://www.gpo.gov/fdsys/pkg/FR-2017-10-26/pdf/2017-23038.pdf>.

<sup>2</sup> Association of Transcribers and Speech-to-text Providers (“ATSP”), Association of Research Libraries (“ARL”), American Library Association (“ALA”) & Association of College and Research Libraries (“ACRL”) Class 2 Petition at 3 (“Class 2 Petition”), <https://www.regulations.gov/document?D=COLC-2017-0007-0067>; 2017 NPRM, 82 Fed. Reg. at 49,560.

<sup>3</sup> See generally Association of Transcribers and Speech-to-text Providers et al., Class 2 Long Comment (Dec. 18, 2017) (“ATSP 2017 Comment”) <https://www.copyright.gov/1201/2018/comments-121817/class2/class-02-initialcomments-atsp-et-al.pdf>.

and lawmakers alike—for exemptions that make copyrighted works available to people with disabilities.<sup>4</sup>

In the current proceeding, two commenters have challenged certain aspects of our proposed exemption.<sup>5</sup> Their comments present an array of disjointed and unclear arguments, but appear to generally fall into three categories.

- First, the opposition contends that the market provides sufficient access to copyrighted works in accessible formats, and therefore that disability service professionals are not adversely affected by the prohibition on circumvention.<sup>6</sup>
- Second, the opposition argues that the scope of the petition is vague, noting that we have inadequately described the conduct for which we seek an exemption.<sup>7</sup>
- Finally, the Motion Picture Association of America, Inc. (MPAA), the Recording Industry Association of America (RIAA), the Association of American Publishers (AAP) (collectively, Joint Creators and Copyright Holders) question whether reconfiguring works into an accessible format for people with disabilities constitutes a fair use, essentially implying that the good-faith work of disability service professionals is copyright infringement.<sup>8</sup>

The first two concerns—those relating to the breadth and scope of the petition—appear merely to reflect a misreading of our petition and misunderstandings of both the marketplace for accessible versions of motion pictures and the work that disability service professionals do, which we attempt to explain here.

However, the third argument—that making works accessible to people with disabilities, and in particular students in educational settings, might be unlawful—is not just poorly articulated but cruelly unjust, and followed to its logical conclusion, would undermine the

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<sup>4</sup> See ATSP 2017 Comment at 2-3 (illustrating Copyright Office’s precedent of exempting accessibility activities from Section 1201 in the triennial review and the broad support for those exemptions).

<sup>5</sup> See generally DVD Copy Control Association and Advanced Access Content System Licensing Administrator, LLC, Class 2 Opposition Comment (Feb. 12, 2018) (“2018 DVD CCA and AACS LA Opposition Comment”), [https://www.copyright.gov/1201/2018/comments-021218/class2/Class\\_02\\_Opp'n\\_DVD\\_CCA\\_&\\_AACS\\_LA.pdf](https://www.copyright.gov/1201/2018/comments-021218/class2/Class_02_Opp'n_DVD_CCA_&_AACS_LA.pdf); Joint Creators and Copyright Holders, Class 2 Opposition Comment at 3 (Feb. 12, 2018) (“2018 Joint Creators and Copyright Holders Opposition Comment”), [https://www.copyright.gov/1201/2018/comments-021218/class2/Class\\_02\\_Opp'n\\_Joint\\_Creators\\_I.pdf](https://www.copyright.gov/1201/2018/comments-021218/class2/Class_02_Opp'n_Joint_Creators_I.pdf).

<sup>6</sup> 2018 DVD CCA and AACS LA Opposition Comment at 2; 2018 Joint Creators and Copyright Holders Opposition Comment at 3.

<sup>7</sup> 2018 Joint Creators and Copyright Holders Opposition Comment at 10-12.

<sup>8</sup> *Id.* at 10-18.

civil rights of people with disabilities for no countervailing policy rationale. Moreover, it is overwhelmingly rebutted by the legal and factual evidence presented in our initial long form comment.<sup>9</sup>

**I. The proposed exemption is appropriately crafted to cover the many works that arrive in disability services offices in an inaccessible format.**

Opponents contend that our proposed exemption is too broad. First, DVD Copy Control Association (DVD CCA) and the Advanced Access Content System Licensing Administrator, LLC (AACCS LA) argue that the proposed exemption is overly broad because we did not identify any DVD or Blu-ray titles that lack captioning or audio description; as such, DVD CCA and AACCS LA posit that we did not present sufficient evidence to support an “exemption as applied to CSS and AACCS.”<sup>10</sup> Relatedly, opponents suggest that the improved availability of accessible motion pictures on the market near obviates the need for the proposed exemption because it would allow circumvention when a work is already available in an accessible format.<sup>11</sup> Accordingly, the opposition argues that we did not adequately demonstrate that disability service professionals are adversely affected by the prohibitions on circumvention.<sup>12</sup>

Contrary to those arguments, the prohibition on circumvention adversely affects disability service professionals when they need to reconfigure inaccessible works into accessible formats. In educational institutions in particular, the prevalence of inaccessible works is incontrovertible. For example, 70% of the more than 28,000 DVDs in one university library, the Emory Heilbrun Music & Media Library, lack accessibility features.<sup>13</sup> We also found many commercially available DVDs that likewise lack accessibility features.<sup>14</sup> Denying our exemption to make these films accessible would place an undue legal burden on disability service professionals: they would have to either risk incurring legal liability under the DMCA or not fulfill their legal obligations under the ADA.

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<sup>9</sup> See generally ATSP 2017 Comment.

<sup>10</sup> 2018 DVD CCA and AACCS LA at 2.

<sup>11</sup> See 2018 Joint Creators and Copyright Holders Opposition Comment at 3; 2018 DVD CCA and AACCS LA Opposition Comment at 3-5.

<sup>12</sup> 2018 DVD CCA and AACCS LA Opposition Comment at 3 (stating that “the proponents cannot show that the alleged noninfringing use is being adversely affected by the prohibition against circumvention”); 2018 Joint Creators and Copyright Holders Opposition Comment (considering “whether the proponents have provided sufficient facts to justify a finding that the prohibition is actually having or is likely to have an adverse effect on noninfringing uses”).

<sup>13</sup> Appendix A; E-mail from James Steffen, Emory University, to Carrie Russell, American Library Association (Feb 28, 2018) (on file with counsel).

<sup>14</sup> E.g., Appendix A; E-mail from Bradley A. Scott, consumer, to Carrie Russell, American Library Association (Feb 28, 2018) (on file with counsel).

Moreover, opponents' proposed alternative to circumvention—sourcing accessible format versions that a school or library does not already possess—is burdensome and unworkable. To ask an educational institution to identify the thousands of films that are inaccessible and repurchase them, simply because the content creators and distributors did not make those films accessible at the outset is not only economically infeasible, but would contravene the ADA's principles against imposing unnecessary costs to improve accessibility for people with disabilities.<sup>15</sup>

**A. The record demonstrates sufficient adverse effects to justify the proposed exemption.**

As a threshold matter, opponents misstate the standard that this Office has used for determining whether the prohibitions on circumvention adversely affect a person's noninfringing use of copyrighted works. Specifically, by arguing that we did not demonstrate an adverse effect because we did not list any DVD or Blu-ray titles in our long form comment, the DVD CCA and AACCS LA overlook a core tenet of these proceedings: the Register and the Librarian must “assess whether the prevalence of these technological protections, with respect to particular categories of copyrighted materials, is diminishing the ability of individuals to use these works in ways that are otherwise lawful.”<sup>16</sup>

Generally, to determine whether there is an adverse effect, this Office weighs “[t]he harm identified by a proponent of an exemption . . . with the harm that would result from an exemption’ ” and considers “whether an exemption is warranted because users of that class of works have suffered significant harm in their ability to engage in noninfringing uses.”<sup>17</sup> And the evidence demonstrating those harms must “be real, tangible, and concrete” to show that “adverse effects are not merely possible, but probable.”<sup>18</sup>

Against this standard, our initial long form comment overwhelmingly established that the prohibitions on circumvention acutely harms disability service professionals.<sup>19</sup> Disability services offices currently receive numerous requests—often, hundreds per semester—from faculty, student services offices, and other campus organizations, to reconfigure videos into formats that are accessible to students with disabilities, generally through the provision of

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<sup>15</sup> Cf. 28 C.F.R. § 35.149, 35.150, 35.130(f) (stating that a “public entity may not place a surcharge on . . . any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the [ADA]”)

<sup>16</sup> 2018 DVD CCA and AACCS LA Opposition Comment at 3.

<sup>17</sup> U.S. Copyright Office, A Report of the Register of Copyrights 118 (Jun. 2017) (“2017 Report”) <https://www.copyright.gov/policy/1201/section-1201-full-report.pdf> (quoting 2006 Recommendation at 5; 2003 Recommendation at 6; 2000 Recommendation and Final Rule at 64,563).

<sup>18</sup> 2017 Report at 121-122.

<sup>19</sup> See ATSP 2017 Comment at 17-19.

captions or audio description.<sup>20</sup> The current prohibitions create legal uncertainty as to whether disability service professionals can reconfigure these works, which arrive in their offices through the lawful chain of distribution and in an inaccessible format, to serve disabled individuals in accordance with their legal and ethical obligations under the ADA and other disability laws.<sup>21</sup>

Conversely, the harm that would result from granting the exemption is negligible. As we demonstrated in our initial comment, the market to retroactively make works accessible is insufficient to address the widespread prevalence of motion pictures that exist in inaccessible formats.<sup>22</sup>

While the foregoing demonstration is more than sufficient to satisfy Section 1201's requirements for an exemption, we have attached an appendix with references to nearly 50 examples of titles that we verified are not available in captioned or described format.<sup>23</sup> This list is particularly relevant because it underscores the prevalence of inaccessible works that exist in educational institutions.<sup>24</sup>

To compile this list, we used two methods. First, we contacted university staff and faculty who may have encountered works that were inaccessible, which was particularly demonstrative of the adverse effects of the prohibitions; we received accounts of situations where faculty had to abandon plans to use a title because of captioning issues.<sup>25</sup> Second, we went to the libraries at the University of Colorado and pulled just a handful of the many titles that lie on the shelves. Of all the titles we pulled, many were missing captions and not a single one was audio described.

Of course, this list is merely an illustration and not exhaustive of the many titles that are subject to requests for accessibility in disability services offices. For example, Emory's Heilbrun Music and Media Library has 28,190 DVDs in its collection. Based on a general keyword search for the phrase "hearing impaired" in the bibliographic records, only 8,827—that is, barely 30 percent—of titles showed up in the results as including accessibility measures.<sup>26</sup> And this figure is over-inclusive because it counts subtitles for the deaf or hard-

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<sup>20</sup> *Id.* at 7.

<sup>21</sup> *Id.* at 17-19; Letter from Rebecca B. Bond, Chief, Disability Rights Section, Department of Justice, to Nicholas B. Dirks, Chancellor, Univ. of Cal. Berkeley (Aug. 30, 2016) ("DOJ 2016 Letter to Berkeley"), [https://www.ada.gov/briefs/uc\\_berkeley\\_lof.pdf](https://www.ada.gov/briefs/uc_berkeley_lof.pdf) (stating that if UC-Berkeley could not find a way to make works accessible "the Attorney General may initiate a lawsuit pursuant to the ADA").

<sup>22</sup> ATSP 2017 Comment at 11-12; *see e.g.*, Appendix A.

<sup>23</sup> Appendix A.

<sup>24</sup> *See infra* p. 8-9.

<sup>25</sup> E-mail from Jude Baldwin, College of the Siskiyous, to Carrie Russell, American Library Association (Feb. 28, 2018) (on file with counsel); Appendix A.

<sup>26</sup> Appendix A; E-mail from James Steffen, Emory University, to Carrie Russell, American Library Association (Feb 28, 2018) (on file with counsel).

of-hearing (SDH)—which the Federal Communications Commission (FCC) has recognized are not an adequately accessible substitute for captions.<sup>27</sup>

The Joint Creators and Copyright Holders nevertheless cite the Department of Justice (DOJ)'s 2014 rulemaking proceedings where the DOJ noted that “movie studios appear committed to making their movies accessible to individuals who are deaf or hard of hearing or blind or have low vision” and “movie studios and distributors regularly include the accessibility features”<sup>28</sup>

That movie studios and movie theaters increasingly collaborate to make theater showings of videos accessible has little bearing on the context of this exemption, which is making movies accessible in educational contexts. Many of the motion pictures that arrive in disability services offices are foreign materials, documentaries, and older materials that differ from the major studio offerings; they are often rare and not readily available in accessible formats.<sup>29</sup> And when a video arrives in a disability services office in an inaccessible format, disability services professionals cannot simply refer the student who must watch the video for class to a movie theater to watch a different motion picture in an accessible format. They must reconfigure the specific work the student has been assigned into a format that is accessible to the student in order to fulfill their legal and ethical obligations.

Opponents nevertheless argue that motion pictures are increasingly available in an accessible format in other contexts, stating that “progress [that] has been made since the Register last considered the issue, during the 2012 rulemaking cycle.”<sup>30</sup> As opponents allude, this progress can largely be attributed to the laws and regulations that have compelled content distributors to improve the availability of copyrighted works.

However, as Joint Creators and Copyright Holders acknowledges, “not every motion picture is available in an accessible format.”<sup>31</sup> Indeed, while a patchwork of laws and regulations have compelled content distributors to make works accessible, notable gaps persist and a variety of content not covered by these rules still exist in inaccessible formats.<sup>32</sup> That works routinely arrive in disability services offices in inaccessible formats is not an anecdotal or exceptional occurrence; it is a result consistent with the systemic shortcomings in the law requiring the accessibility of video programming.

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<sup>27</sup> Closed Captioning of Internet Protocol-Delivered Video Programming, Report and Order, 27 FCC Rcd. 787, 846, ¶ 100 (Jan. 13, 2012) (noting that SDH is not accessible because it does not provide all of the features available with closed captions).

<sup>28</sup> 2018 Joint Creators and Copyright Holders Opposition Comment at 4-5.

<sup>29</sup> E-mail from James Steffen, Emory University, to Carrie Russell, American Library Association (Feb 28, 2018) (on file with counsel); ATSP 2017 Comment at 18; Appendix A.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> See Appendix A; see also ATSP 2017 Comment at 17-19.



For example, the FCC’s rules for video description, the primary impetus for the creation of described programming in the United States, only require broadcast television stations and multichannel video programming distributor (MVPD) systems, such as cable and satellite television providers, to provide 50 hours of described programming per calendar quarter (expanding to 87.5 hours in July 2018) for each of the top four national broadcast networks and the top five national nonbroadcast networks—a small fraction of the content distributed on those systems.<sup>33</sup> In practice, the quantity is even less than that because the Commission’s rules allow broadcasters and MVPDs to count airings of described programming twice toward the quarterly requirement.<sup>34</sup> And the rules do not apply to programming delivered over the Internet, such as via streaming services or optical media formats like Blu-ray and DVD.

Moreover, the MPAA, a signatory of the Joint Creators and Copyright Holders comment, expressly advocated as recently as 2016 in a series of meetings at the FCC to reduce the requirement for described programming by allowing the same programming to be counted toward the hourly requirement even more than two times, by allowing the hourly requirement to be averaged over multiple quarters, and permitting more programming outside of prime-time hours to count toward the requirements.<sup>35</sup> The MPAA also urged the Commission not to extend video descriptions to additional networks or on-demand programming.<sup>36</sup> The MPAA even declared in 2016 comments to the FCC that expanding video description requirements to cover more programming would be “unconstitutional” and that video description is a “type of compelled speech that is significantly . . . burdensome on First Amendment rights.”<sup>37</sup>

While more expansive than the rules for video description, the FCC’s rules for closed captioning also contain significant gaps. For example, the rules for television programming contain more than a dozen categorical exemptions, covering everything from programming

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<sup>33</sup> See 47 C.F.R. § 79.3(b)(1) and (4).

<sup>34</sup> See 47 C.F.R. § 79.3(c)(2).

<sup>35</sup> E.g., Letter from Brandon H. Johnson, Counsel to MPAA to Marlene H. Dorch, FCC Docket No. 11-43 at 1-2 (Nov. 15, 2016) (describing a meeting between Johnson, Neil Fried of the MPAA, and Holly Saurer, Advisor to then-FCC Chairman Tom Wheeler), <https://ecfsapi.fcc.gov/file/11150920420857/Ex%20Parte%20for%2011-10-16%20Meeting%20with%20Holly%20Saurer%2C%20Legal%20Advisor%20to%20Chairman%20Wheeler.pdf>.

<sup>36</sup> Letter from Kurt Wimmer and Brandon H. Johnson, Counsel to MPAA, to Bill Lake, Chief, FCC Media Bureau, Docket No. 11-43 at 3-4 (Nov. 10, 2016), [https://ecfsapi.fcc.gov/file/1110506003097/Letter to Media Bureau Regarding Flexibility in Video Description Rules.pdf](https://ecfsapi.fcc.gov/file/1110506003097/Letter%20to%20Media%20Bureau%20Regarding%20Flexibility%20in%20Video%20Description%20Rules.pdf).

<sup>37</sup> Comments of MPAA, FCC Docket No. 11-43 at iii, 5 (June 17, 2016), [https://ecfsapi.fcc.gov/file/106271455127326/MPAA\\_Video%20Description%20Comments%20FINAL%20DRAFT%2006%2027%202016.pdf](https://ecfsapi.fcc.gov/file/106271455127326/MPAA_Video%20Description%20Comments%20FINAL%20DRAFT%2006%2027%202016.pdf).

aired late at night to locally-produced programming to new networks.<sup>38</sup> The FCC's rules only cover Internet-delivered programming when it has also been published or distributed on television—thereby omitting online-exclusive programming—and contain a variety of limitations and caveats in the coverage video clips, even when they have been on television.<sup>39</sup> The FCC's closed captioning rules do not cover programming on DVD or Blu-ray discs, and even where DVD and Blu-ray discs contain captions, a long-pending-matter at the FCC has left as an open question whether DVD and Blu-ray *players* will be required to render them, meaning that many players used in educational settings lack the capacity to show closed captions even if they are already included on a DVD.<sup>40</sup>

We acknowledge that gaps in regulatory coverage can and are often filled by the voluntary efforts of content creators and distributors. We welcome the efforts of content creators and distributors to make works accessible at the outset, and indeed, many disability services professionals are engaged in active efforts to encourage content distributors to make their works accessible at the outset and to encourage faculty members and students to choose accessible content when using video in educational contexts.

Unfortunately, there is little evidence to support the notion that content creators and distributors are enthusiastic about or willing to provide works *ubiquitously* in an accessible format. In fact, the evidence overwhelmingly points to the contrary. For example, as recently as November 2017, disability advocacy groups sued Hulu, one of the largest online video streaming services in the country, for failing to provide audio description for its videos.<sup>41</sup> Others, such as Netflix, have been involved in similar lawsuits and settlements to require captioning of video programming.<sup>42</sup> These lawsuits underscore the market's failure to distribute films in an accessible format.

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<sup>38</sup> See 47 C.F.R. § 79.1(d).

<sup>39</sup> See 47 C.F.R. § 79.4(b).

<sup>40</sup> See Closed Captioning of Internet Protocol-Delivered Programming, Order on Reconsideration and Further Notice of Proposed Rulemaking, Docket No. 11-154, 28 FCC Rcd. 8785, 8786-87, 8793-98, 8806-07, ¶¶ 2, 16-22, 35-37 (June 14, 2013), [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-13-84A1\\_Rcd.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-13-84A1_Rcd.pdf).

<sup>41</sup> Alana D. Richer, Hulu sued for not offering audio service for blind customers, L.A. Times (Nov. 23, 2017) <http://beta.latimes.com/sns-bc-us--hulu-blind-lawsuit-20171121-story.html>.

<sup>42</sup> *Nat'l Ass'n of the Deaf v. Netflix, Inc.*, 869 F. Supp. 2d 196, 199–200 (D. Mass. 2012) (the National Association of the Deaf (“NAD”) alleged that Netflix was discriminating against deaf and hard-of-hearing viewers because not all their streaming video had closed captions); Hulu, *The National Association of the Deaf and Hulu Reach Agreement*, Hulu Press (Sept. 6, 2016) <https://www.hulu.com/press/the-national-association-of-the-deaf-and-hulu-reach-agreement/>. Emily Griffin, *Amazon to Caption 190K+ Films and TV Shows by 2017*, 3PlayMedia (Jan 4, 2018) <https://www.3playmedia.com/2015/10/16/amazon-to-caption-190k-films-and-tv-shows-by-2017/> (“The NAD struck a deal with to ensure that Amazon’s library of over 190,000 TV shows and films would be closed captioned.”).

The prevalence of inaccessible works is particularly pronounced in educational settings. For example, in August 2016, the DOJ sent a letter to the University of California–Berkeley notifying the university that it was in violation of Title II of the ADA for failing to make a significant quantity of video accessible. The DOJ found that Berkeley’s public legacy library, which included over 20,000 audio and video files on the university’s online platforms, failed to meet the ADA’s accessibility requirements because students with disabilities did not have equal opportunity to use the online content. The DOJ asked Berkeley to implement a set of remedial measures.<sup>43</sup> Rather than comply with the DOJ’s request, however, Berkeley determined that retroactively making over 20,000 publications available in an accessible format would be too costly and decided to move the content behind an authentication system, effectively ending public access to its online content.<sup>44</sup> Both MIT and Harvard currently face similar lawsuits.<sup>45</sup>

Together, these examples—the enduring prevalence of inaccessible works on the market, the gaps in regulatory schemes, and the myriad of lawsuits and settlements against content distributors and universities—expose the systemic shortcomings that disadvantage people with disabilities. This petition aims to mend just one piece of this fractured system.

**B. The proposed alternatives to circumvention are untenably burdensome and would adversely affect both disability service professionals and the people they serve**

Opponents further ask the Register to limit the scope of the proposed exemption by suggesting that there may be alternatives to circumvention, primarily arguing that where a work is already available in an accessible format, circumvention is unnecessary.<sup>46</sup>

At the outset, we emphasize that educational institutions are not monolithic enterprises. The way in which the prohibitions on circumvention affects each disability service office, library, and other entities responsible for video accessibility is different. As a general matter, however, the only proposed alternative to circumvention—searching for alternative copies on the market—is not a realistic solution for disability service professionals.

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<sup>43</sup> DOJ 2016 Letter to Berkeley (concluding that UC–Berkeley was in “violation of title II because significant portions of its online content [were] not provided in an accessible manner when necessary to ensure effective communication with individuals with hearing, vision or manual disabilities”).

<sup>44</sup> *Cf.* Univ. of Cal. Berkeley Pub. Affairs, *A statement on online course content and accessibility*, Berkeley News (Sept. 13, 2016), <http://news.berkeley.edu/2016/09/13/a-statement-on-online-course-content-and-accessibility/>.

<sup>45</sup> Tamar Lewin, *Harvard and M.I.T. Are Sued Over Lack of Closed Captions*, NY Times (Feb. 12, 2015), <https://www.nytimes.com/2015/02/13/education/harvard-and-mit-sued-over-failing-to-caption-online-courses.html>.

<sup>46</sup> 2018 Joint Creators and Copyright Holders Opposition Comment at 18.

When a motion picture arrives in a disability services office in an inaccessible format—that is, the motion picture lacks accessibility features such as captions or audio description or those accessibility features that do not meet the legal quality standards established by the FCC and other disability laws—disability service professionals do not have the discretion to reject that work.<sup>47</sup> Rather, under the ADA, they are “required to furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities an equal opportunity.”<sup>48</sup> Indeed, the Department of Justice has the authority to censure and initiate legal action against educational institutions where disability service professionals decline or are unable to make content accessible to people with disabilities.<sup>49</sup>

More, given both the sheer number of inaccessible works that are in circulation in educational institutions and that disability service professionals operate on a tight timeline and with a limited staff—often only one or two people are employed to make works accessible—it is unrealistic and unduly costly to ask disability service professionals to search for new and accessible copies of the works that land on their desks.<sup>50</sup>

While some titles may exist in an accessible format, it would impose an unnecessarily demanding cost on universities to repurchase thousands of titles in accessible formats, particularly given that accessible versions are simply not available for a significant proportion of those titles.<sup>51</sup> Sourcing alternative versions is not just costly and time consuming; it is wholly inconsistent with the principles established in the ADA to mitigate the costs associated with retroactively making content accessible.<sup>52</sup>

Moreover, disability service professionals are generally under a tight timeline to reconfigure motion pictures into an accessible format. Students registered with a disability office can drop, change, and add classes just like any other student.<sup>53</sup> As such, disability service professionals are under intense legal pressure to quickly reconfigure large volumes of content in a manner that is compliant with stringent quality standards—both internal and legally imposed—for accessibility features.<sup>54</sup> With closed captions, for example, many institutions adhere to strict guidelines for accuracy, timeliness, completeness, and on-screen placement, which are necessary to ensure that deaf and hard of hearing individuals have full

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<sup>47</sup> See generally 28 C.F.R. § 35.160(b)(1); 34 C.F.R. § 105.20; 34 C.F.R. § 105.40; cf. DOJ 2016 Letter to Berkeley at 8.

<sup>48</sup> 28 C.F.R. § 35.160(b)(1).

<sup>49</sup> DOJ 2016 Letter to Berkeley at 10.

<sup>50</sup> E-mail from Shannon Cowling, ATSP, to counsel (Mar. 9, 2018) (on file with counsel).

<sup>51</sup> Cf. Univ. of Cal. Berkeley Pub. Affairs, A statement on online course content and accessibility, Berkeley News (where UC–Berkeley determined that it could not retroactively provide a large volume of content accessible “due to our current financial constraints”).

<sup>52</sup> 28 C.F.R. § 35.149, 35.150, 35.130(f).

<sup>53</sup> 2018 ATSP Comment at 18-19.

<sup>54</sup> 2018 Interview with Shannon Cowling of the Association of Transcribers and Text-to-Speech Providers (Mar. 5, 2018).

access to programing.<sup>55</sup> Even more, if disability service professionals fail to reconfigure motion pictures timely and in a manner consistent with their internal standards, they could be subject to legal action from the Department of Justice.<sup>56</sup>

Against that legal framework, alternatives to circumvention are not realistic solutions for disability service professionals. Without an exemption for circumvention, the primary, and wholly undesirable, alternative that disability service professionals must often use now: that is for disability service professionals to tell faculty that they cannot use a video in their course.<sup>57</sup> Under this Office’s standard for determining whether there is an adverse effect—that is, weighing the “[t]he harm identified by a proponent of an exemption . . . with the harm that would result from an exemption,”—denying the proposed exemption because the opposition has identified a costly and unworkable alternative to circumvention would contravene the purpose of this rulemaking proceeding.<sup>58</sup>

## **II. The proposed exemption encompasses conduct that is necessary to lawfully provide accessible content to people with disabilities.**

Opponents argue that the scope of the petition is vague because “petitioners do not explain precisely the conduct in which they seek to engage,” which they contend frustrates their understanding of three things: (1) whether circumvention is required to furnish works with captions or audio description; (2) whether disability service professionals are lawfully acquiring and distributing the motion pictures that they reconfigure into accessible formats; and (3) whether our exemption implicates Section 1201’s prohibitions on trafficking circumvention tools.<sup>59</sup> To clarify the scope of our petition and address these concerns, this section will detail the conduct for which we seek an exemption.

First, disability service professionals are seeking an exemption for conduct that would implicate Section 1201’s anti-circumvention provisions. To reiterate, libraries and educational institutions are not monolithic in their approach to accessibility. The methods that disability services professionals use to make works accessible vary from office to office. Nevertheless, disability service professionals generally must circumvent to make video accessible and there are limited methods by which offices might carry out the process.

The proposed exemption would only enable disability services professionals to add accessibility features to motion pictures obtained through a lawful chain of distribution.

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<sup>55</sup> *Id.*; see also 47 C.F.R. § 79.1(j)(2) (spelling out the FCC’s caption quality standards, which are used as a model by some disability services offices).

<sup>56</sup> DOJ Letter 2016 to Berkeley at 8 (threatening suit in part because the DOJ concluded Berkeley was in violation of title II because it “ha[d] not met the goal of its own policy requiring it ‘to seek[] to deploy information technology that has been designed, developed, or procured to be accessible to people with disabilities’”).

<sup>57</sup> ATSP 2017 Comment at 18-19.

<sup>58</sup> 2017 Report (quoting 2006 Recommendation at 5).

<sup>59</sup> 2018 Joint Creators and Copyright Holders Opposition Comment at 10.

Specifically, when a student registers with a disability service office, that office cannot deny that student service. After a student registers for courses, professors and other instructors will generally submit lawfully obtained copies of course materials, including audiovisual works, to a disability service office, where the disability service providers will assess the accessibility features of those materials. The disability service office is required to ensure that all of the materials for the student's course, including any audiovisual materials are available in an accessible format. If the motion picture is in an inaccessible format, then the disability service professionals must find a way to reconfigure that motion picture into an accessible format.<sup>60</sup>

Making the motion picture accessible requires at least one of two methods to be applied, depending on whether the student is deaf or hard of hearing, blind or visually impaired, DeafBlind, or has Auditory Processing Disorder. If a student is deaf or hard of hearing or has Auditory Processing Disorder, a disability services professional will add captions to the video. Captioning is the process of converting the audio content of a television broadcast, webcast, film, video, CD-ROM, DVD, live event, and other productions into text and displaying the text on a screen or monitor. Captions not only display words as the textual equivalent of spoken dialogue or narration, but also include speaker identification, sound effects, and music description.

Audio description refers to an additional narration track for blind and visually impaired consumers of visual media. It consists of a narrator talking through the presentation, describing what is happening on the screen during the natural pauses in the audio, and sometimes during dialogue if deemed necessary.

Disability services professionals, if granted the proposed exemption, would typically circumvent TPMs to add captions or audio descriptions in one of two ways.

Under the first option, the office could choose to caption or audio describe entirely in-house. This process would require a trained disability services professional to circumvent TPMs, rip the video from the TPM-encumbered media and compress it into an MP4 or similar format compatible with captioning or describing software. To caption a work, a disability services professional manually adds captions, including speaker identification and sound effects, to a motion picture. Specifically, the disability services professional divides the transcript into 32 characters with no more than 2 lines of text, and then—using captioning software—adds the time codes to ensure the captions are synchronized with the motion picture. Finally, the captioning file is imported into the video.

To audio describe a work, a disability services professional manually creates a verbatim transcript of the motion picture. To do this, a disability services professional will essentially watch a motion picture and create a narrative that describes what is taking place in the video. Audio descriptions must contain a similar amount of detail as in captions, meaning things such as sound effects and transitions must be included in the final description. Also similar

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<sup>60</sup> See ATSP 2017 Comment at 19.

to the captioning protocol, disability services professionals ensure that the audio description accurately time-syncs to the motion picture.

Under the second option, an office outsources captioning or audio-describing to a commercial vendor, such as 3Play Media or VITAC. Such commercial vendors specialize in making works accessible, however, to do so, they must receive media in the form of an MP4 or similar format, which requires circumvention of TPMs beforehand. Commercial vendors specify in their terms of agreement that no confidential information will be compromised—i.e., that the video will not be disseminated—in the course of captioning or audio describing, consistent with similar agreements those vendors strike with copyright holders when they caption their content.<sup>61</sup>

Regardless of the method by which an office makes works accessible, once the media is captioned or audio described, disability services professionals then deliver the newly accessible media to the requesting student in the same way that content is distributed to non-disabled students. Contrary to the opponents' speculation that disability service professionals might be “providing accessible versions of [motion pictures] to individuals without prior, lawful access to [those] works,” the proposed exemption simply seeks to allow disability service professionals to give students with disabilities the same lawful access to copyrighted content as their non-disabled peers. This is often accomplished by uploading the accessible video and accompanying timed-text caption file or described audio to Kaltura, Kanopy Streaming or a similar private distribution platform available only to students. The captioned video is disseminated to students just as the inaccessible version would be.

The opposition raises two additional concerns regarding the distribution of content that are outside the scope of the petition. First, the opposition speculates the proposed exemption may pave the way for dissemination through “publicly available online database with captioned works or audio description” and asks that this Office “categorically prohibit [such conduct]” in any approval.<sup>62</sup> Second, the opposition is concerned that a disabled student may be able to bring a video that she purchased for entertainment, but is in an inaccessible format, to disability services offices to have the video reconfigured into an accessible format.<sup>63</sup>

Both these concerns are unfounded given the purpose of this exemption; it covers only the use and distribution of copyrighted works that would otherwise be lawful absent the anti-circumvention measures of Section 1201—disability service professionals seek only to lawfully distribute works to disabled students in the same manner that those same works are

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<sup>61</sup> 3Play Media, *Terms of Service*, <https://www.3playmedia.com/terms/> (“3Play Media will not disclose to any third party such Confidential Information revealed to it by Client unless and until required by court order or other legal process to do so or such information passes into the public domain. . . . 3Play Media will store transcription and captioning output files in [a] secure environment.”) (last visited March 14, 2018).

<sup>62</sup> 2018 Joint Creators and Copyright Holders Opposition Comment at 12.

<sup>63</sup> *Id.*

lawfully distributed to their non-disabled peers. Like the other exemptions in this proceeding, this exemption need not contain any explicit limitation on post-circumvention distribution because if such distribution is infringing, it will run afoul of both the scope of the exemption and the exclusive rights of the copyright holder under 17 U.S.C. § 106.

Finally, despite concerns raised by the opposition, the proposed exemption does not implicate Section 1201's prohibitions on trafficking circumvention tools. The opposition states, without reference, citation, or explanation, that the "proposed class clearly extends beyond the targeted 2012 exemption to cover the provision of circumvention services and, perhaps, the creation and circulation of circumvention tools."<sup>64</sup>

There is nothing in the proposed exemption that would contemplate the creation and dissemination of circumvention tools.<sup>65</sup> The exemption would simply permit disability services professionals to circumvent for the purpose of making videos accessible when those videos are lawfully acquired and used in educational settings.<sup>66</sup> To the extent that these concerns would be addressed by limiting the exemption to making videos accessible in contexts where the sourcing and distribution of video is also non-infringing, whether under fair use or relevant educational or library exemptions, we would not object to modifying the exemption language accordingly.

### **III. Making video content accessible is an uncontroversial, non-infringing fair use.**

Joint Creators and Copyright Holders also oppose the proposed exemption by raising the spectre of copyright infringement. At the outset, we note that Joint Creators and Copyright Holders carefully avoid explicitly contending that making works accessible constitutes infringement.<sup>67</sup> As our initial comments demonstrate, doing so is indeed non-infringing, and indeed, the Office need inquire no further.<sup>68</sup>

Nevertheless, Joint Creators and Copyright Holders insinuate that our comment fails to demonstrate that reconfiguring works into an accessible format constitutes a fair use.<sup>69</sup> To the contrary, adding closed captions and video descriptions is an uncontroversial, non-infringing fair use under both case law and the traditional four-factor analysis.

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<sup>64</sup> *Id.* at 20.

<sup>65</sup> *See generally* Class 2 Petition.

<sup>66</sup> *Id.*

<sup>67</sup> 2018 Joint Creators and Copyright Holders Opposition Comment at 16. (Joint Creators and Copyright Holders broadly contend that the proposed conduct is not a fair use.).

<sup>68</sup> ATSP 2017 Comment at 10-12.

<sup>69</sup> 2018 Joint Creators and Copyright Holders Opposition Comment at 16.



**A. Adding closed captioning and audio (video) descriptions to make videos accessibility to people with disabilities is an uncontroversially non-infringing fair use.**

Joint Creators and Copyright Holders suggest that our initial comment’s reliance on *HathiTrust* and the Copyright Office’s 2015 Rulemaking is misplaced and that, as a result, there exists no legal authority to support that adding captions and audio description are a fair use.<sup>70</sup> Instead, Joint Creators and Copyright Holders proffer portions of the Copyright Office’s 2012 Rulemaking—which does not speak on point to the issues presented in the immediate petition—to question that closed captioning and audio descriptions are a fair use.<sup>71</sup>

First, the opposition asserts that our reliance on *HathiTrust* to declare that captioning and audio descriptions are a fair use is misplaced.<sup>72</sup> To do so, the opposition essentially claims that because the facts contemplated in *HathiTrust* do not perfectly mirror the facts at issue in the immediate exemption, the Register cannot rely upon its ruling as precedent.<sup>73</sup> Specifically, the opposition contends without explanation that captions are “significantly different” than the text-to-speech transcription addressed in *HathiTrust*, and that such a use is “likely a derivative work.”<sup>74</sup>

However, the opposition fails to acknowledge broader concepts mentioned in the *HathiTrust* case. As we explained in our initial comment, the *HathiTrust* court held that “the doctrine of fair use allows [the] provi[sion of] full digital access to copyrighted works” to people with disabilities.<sup>75</sup> Additionally, the *HathiTrust* court pointed to the legislative history of the Copyright Act, cited by the Supreme Court, which provides clear “guidance support[ing] a finding of fair use in the unique circumstances presented by print-disabled readers.”<sup>76</sup> In so holding, the Court extended the accessibility concerns contemplated in *Sony v. Universal City Studios*, and serves as the most recent example of a federal court’s view of the intersection between disability and copyright law.<sup>77</sup> Accordingly, the opposition’s interpretation of *HathiTrust* is far too narrow, and our reliance on *HathiTrust* to assert that captioning and audio descriptions are a fair use is consistent with the case’s holding. Furthermore, *HathiTrust* was decided in 2014—long after the 2012 Rulemaking on which the opposition relies heavily—and serves as a more recent adjudication of the issues presented in the proposed exemption.

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<sup>70</sup> *See id.* at 16.

<sup>71</sup> 2018 Joint Creators and Copyright Holders Opposition Comment at 16.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Authors Guild, Inc. v. HathiTrust*, 755 F.3d 87, 103 (2d Cir. 2014).

<sup>76</sup> *Id.* at 102.

<sup>77</sup> *Id.*

Moreover, opponents' reliance on the 2012 triennial review is unavailing. In her 2012 Recommendation, the Register recommended a narrow exemption for researchers at Gallaudet University and other proponents to develop captioning and description-related software.<sup>78</sup> There, the Register was hesitant to grant petitioners a right to actually implement captioning and audio descriptions because of what the Register contended was a lack of detail in the initial petition.<sup>79</sup> The opposition essentially relies on that narrow exemption to argue that the issue of infringement has been addressed before by the Register.<sup>80</sup>

However, the conduct encompassed in the proposed exemption differs substantially from that considered in the 2012 Rulemaking. The 2012 proceeding focused on granting security researchers the ability to circumvent TPMs in order to develop captioning and audio-descriptive software.<sup>81</sup> In contrast, we seek an exemption that allows professors in higher education to comply with their obligations under the American with Disabilities Act and other disability laws by adding closed captions and video descriptions for videos that must be made accessible.<sup>82</sup> This is different because disability services professionals are not seeking an exemption to conduct research for future reference or implementation, rather, they are seeking an exemption so that they may meet legal and moral obligations now. Furthermore, disability services professionals are in the best position to implement captions and audio descriptions, as they receive hundreds of requests to do so every semester.<sup>83</sup>

Moreover, opponents largely ignore the Register's 2015 recommendation on the circumvention of TPMs in the educational context—specifically the exemption for colleges and universities in Class 1—which provides a more apt analogy than the 2012 Rulemaking. Unlike the 2012 proceedings, the 2015 Recommendation's discussion of Class 1 squarely addressed the general scope of the exemption sought in the immediate proceeding—one that allows for the circumvention of TPMs to further educational purposes.<sup>84</sup> In the 2015 Recommendation, the Register explicitly stated, “[under] the first factor, Joint Educators introduced multiple examples of uses for . . . scholarship and teaching in a nonprofit educational context that appeared to represent transformative uses of the original work.”<sup>85</sup> In addition to the significant similarities between the exemption sought in the 2015 proceedings and the exemption sought here, our argument for the proposed exemption is bolstered by the fact that disabilities services offices have legal obligations to provide

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<sup>78</sup> See 2012 Recommendation at 155.

<sup>79</sup> *Id.*

<sup>80</sup> 2018 Joint Creators and Copyright Holders Opposition Comment at 7-10.

<sup>81</sup> See 2012 Recommendation at 143.

<sup>82</sup> ATSP 2017 Comment at 8 (In addition to the ADA, the Rehabilitation Act and IDEA also impose legal obligations on disability services professionals to provide accessible materials to students with disabilities.).

<sup>83</sup> *Id.* at 7.

<sup>84</sup> 2015 Recommendation at 30.

<sup>85</sup> *Id.* at 71.

disabled students with accessible forms of media in educational settings.<sup>86</sup> Therefore, in light of the 2015 Rulemaking, the Register should consider the immediate exemption as a necessary extension of its most recent position on copyrighted works in educational settings.

Opponents also argue that our initial comment did not establish a *prima facie* case of fair use under the four-factor analysis.<sup>87</sup> Specifically, Joint Creators and Copyright Holders maintain that the initial petition was too broad, and that because fair use is a fact-intensive inquiry, such an analysis cannot be applied without a more detailed description of the conduct being considered.<sup>88</sup>

However, our initial comment provided a lengthy and detailed analysis explaining precisely why adding captions and audio descriptions in the context of an educational sitting is an unquestionably non-infringing fair use under the four-factor analysis, to which opponents offered no meaningful counterarguments.<sup>89</sup> In fact, opponents offer no fair use analysis of their own. While this conclusory opposition makes recapitulation of the analysis from our comment unnecessary, we nevertheless reiterate it briefly here.

Adding captions and audio descriptions to make copyrighted works accessible satisfies the first fair-use factor because it serves broader public interests.<sup>90</sup> Furthermore, the Second Circuit's reasoning in *HathiTrust* establishes that providing access for people with disabilities serves a valid purpose under factor one.<sup>91</sup> Finally, in *Sony*, the Supreme Court noted that “[m]aking a copy of a copyrighted work for the convenience of a blind person is expressly identified by the House Committee Report as an example of fair use, with no suggestion that anything more than a purpose to entertain or to inform need motivate copying.”<sup>92</sup> Therefore, the first factor weighs in favor of finding that both captioning and creating audio descriptions are a fair use.

Whether adding captions and creating audio descriptions satisfies the second factor is debatable because although adding captions to a motion picture arguably fails to change the nature of the original work, audio descriptions take an entirely new form compared to the original motion picture. However, failure to satisfy the second factor is not dispositive, and according to the *HathiTrust* court, “[the second factor] does not preclude a finding of fair use . . . given [the] analysis of the other factors.”<sup>93</sup>

Furthermore, adding captions and creating audio descriptions to make works accessible satisfies the third fair-use factor because disability services offices only use what is necessary

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<sup>86</sup> ATSP 2017 Comment at 8.

<sup>87</sup> See 2018 Joint Creators and Copyright Holders Opposition Comment at 10.

<sup>88</sup> *Id.* at 12.

<sup>89</sup> ATSP 2017 Comment at 7-16.

<sup>90</sup> See *HathiTrust*, 755 F.3d at 102.

<sup>91</sup> *Id.*

<sup>92</sup> *Sony Corp. of Am. v. Universal City Studios, Inc.* 464 U.S. 417, 465 (1984).

<sup>93</sup> *HathiTrust*, 755 F.3d at 102.

to convert motion pictures to accessible formats.<sup>94</sup> Specifically, disability services offices utilize only the aural and visual components of a work to either add captions or create audio descriptions.<sup>95</sup> Therefore, because disability services offices use only what is necessary to convert motion pictures into accessible format, the third factor weighs in favor of finding a fair use.

Finally, adding captions and creating audio descriptions to make works accessible satisfies the fourth fair-use factor because such accommodations simply do not have an effect on the market for the originally copyrighted works.<sup>96</sup> The market failure for accessible versions of video programming has persisted for nearly a century, since silent movies excluded people who were blind and visually impaired in the 1920s and Emerson Romero developed the rudiments of captioning in the 1940s.<sup>97</sup> The *HathiTrust* court affirms the market failure for accessibility is pervasive across the field of copyrighted works, noting that “[i]t is undisputed that the present-day market for books accessible to the handicapped is so insignificant that it is common practice in the publishing industry for authors to forgo royalties that are generated through the sale of books manufactured in specialized formats for the blind.”<sup>98</sup>

Aside from the market failures associated with accessible works, copyright holders are not retroactively making motion pictures accessible.<sup>99</sup> Moreover, copyright holders often deny requests from disability services professionals to add captions or create audio descriptions for students and others with disabilities.<sup>100</sup> Because *HathiTrust* recognizes that there is generally no cognizable market for accessible works to begin with, the proposed exemption would not have an effect on the market for originally copyrighted works, and thus, the fourth factor weighs in favor of finding a fair use in the instant proceeding.

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For the foregoing reasons, the Register should recommend the adoption of proposed Class 2.

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<sup>94</sup> *Id.*

<sup>95</sup> ATSP 2017 Comment at 11.

<sup>96</sup> *HathiTrust*, 755 F.3d at 102.

<sup>97</sup> *Id.*; Derek Nicol, *The First Deaf Hero in Closed-Captioning History*, Captionlabs Blog (January 18, 2017) <https://captionlabs.com/blog/the-first-deaf-hero-in-closed-captioning-history/>.

<sup>98</sup> *HathiTrust*, 755 F.3d at 102.

<sup>99</sup> ATSP 2017 Comment at 10.

<sup>100</sup> *Id.* at 12 (One disability services professional lamented the “many cases where the publisher has denied our request to caption videos, or not responded at all.”).

### **Appendix: Examples of Inaccessible Video**

Titles including no parentheticals illustrate DVDs that do not appear to have closed captions. Titles with “(Bonus Features Not Closed-Captioned)” indicate that the feature films include captions or subtitles, but the bonus material does not. None of the titles listed appeared to include audio descriptions.

1. America & Lewis Hine
2. Long Day’s Journey Into Night
3. Deaf Culture: Cultural Differences
4. Danger Man television series
5. The Accused: Being a Victim Was Her Only Crime
6. A Heartwarming Tale of Murder: Brother’s Keeper
7. Advise & Consent (Bonus Material Not Closed-Captioned)
8. All The President’s Men (Bonus Material Not Closed-Captioned)
9. Better Call Saul, Seasons 1 & 2
10. The Birth of a Nation
11. Black Robe
12. Black Horse
13. Breaker Morant
14. Chasing Freedom
15. The Conversation
16. Counselor at Law
17. Crude: The Real Price of Oil
18. Crude Impact
19. Days of Heaven
20. The Fountainhead (Bonus Material Not Closed-Captioned)
21. Freakonomics (Bonus Material Not Closed-Captioned)
22. Girlhood: Growing Up on the Inside
23. Good Night & Good Luck (Bonus Material Not Closed-Captioned)
24. The Hustler (Bonus Material Not Closed-Captioned)
25. Inside Job
26. The Longest Day (Bonus Material Not Closed-Captioned)
27. The Marquise of O
28. Michael Clayton (Bonus Material Not Closed-Captioned)
29. Night and Fog
30. Norma Rae (Bonus Material Not Closed-Captioned)
31. North Country (Bonus Material Not Closed-Captioned)
32. Other People’s Money (Bonus Material Not Closed-Captioned)
33. Paradise Lost
34. Perceval
35. A Separation
36. Triple Agent
37. Well-Founded Fear

38. The Wire
39. Good Morning Aman
40. Offside
41. The Bicycle Thief
42. Awake and Sing
43. Blood in the Face
44. No More Tears Sister
45. Islam in America, Discovery Channel
46. Varsity Blues