

# The Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities

## Full Commission Meeting - Teleconference

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>> CHAIR DIETRICH: Okay According to my cell phone it is 10:02. Should we go ahead and start.

>> SKIP STAHL: I would say yes. And why don't you start and I'll bring us live on the Internet for our 23 work attendees.

>> CHAIR DIETRICH: Just to double-check, Skip, am I to refer them to the PSC@CAST.org e-mail.

>> SKIP STAHL: Yes.

>> CHAIR DIETRICH: Okay. So yeah, let's go ahead and go live.

>> SKIP STAHL: Okay. We're live.

>> CHAIR DIETRICH: Okay. Thank you. Welcome, everyone on the phone and both the people who are listening in and all of the Commission Members who have made the time to be here with us today. My name is Gaier Dietrich. I'm the chair of this

Commission And I'm the director of the High Tech Center Training Unit of the California community colleges.

So I wanted to first start out by giving a little brief introduction to what we're going to be doing today And we'll follow that by a roll call. And then we'll talk about -- we'll be turning the meeting over to my Co-Chair, James Wendorf, in a couple of minutes just to give you an idea of what the Commission is about

Under 772 of the Higher Education Opportunity Act the U.S. Department of Education was directed to establish an Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities. And we are a Commission that includes representatives from the Department of Ed, from Disability Service Providers, from disabled individuals from many of the stakeholders including the publishers and others who have an interest in this area.

What we have been doing since September of 2010 is conducting a study to assess the barriers to improving both the timely delivery and the quality of accessible instructional materials for postsecondary students who have some disability related to being able to access standard materials. Part of what we're doing is looking at identifying workable solutions and in particular solutions on how students with print disabilities may obtain their instructional materials in a comparable timeframe and comparable costs with their non-disabled peers.

Also we are specifically asked to look at the issues of file formats and repositories and file sharing networks to see if there might be some practices there that will aid students in obtaining these materials.

We're also in -- have been directed to look at market-based solutions to see if there might be a potential market model for solving these situations. We're also in that overview to keep in mind the ideas of Universal Design and how those might be utilized in providing access for students.

And finally we've been asked to look at those areas that may not be covered by a market model, those what we're calling the low incidence high cost materials. And that would include both things like Braille and tactile graphics and also those materials that have very limited numbers of individuals who might be accessing them such as some of the materials for graduate studies where you may only have one student in the entire country who actually needs alternate formats for that material.

So that gives you kind of an overview of what we are all about.

I want to again in addition to thanking the public for joining us let you know that if you have comments or questions at any point during today's discussion, you may e-mail those. If we have time we may respond to them. Otherwise we will collect them and just take them into our deliberations. And that e-mail address is P as in Paul. S as in Sam. C as in cat. At CAST, C-A-S-T, .org. Again that's PSC, it stands for Postsecondary Commission, PSC@CAST.org.

Okay. So I would like now to have us go into a roll call. And what I'm going to ask the Commission Members to do is to introduce yourself. Tell us who you represent. And give us your title and who it is that you are here to speak for.

So I'm actually going to go in the order of the Task Force groups and save Task Force 4 for last because they will be doing the main bulk of the presentation today. And so I would like to start with Task Force 1.

>> TUCK TINSLEY: Tuck Tinsley, president of the American Council of the Blind in Louisville, Kentucky

>> CHAIR DIETRICH: Lizanne DeStefano will be joining us at the top of the hour.

>> CHAIR DIETRICH: Andrew Friedman?

>> ANDREW FRIEDMAN: (No response).

>> CHAIR DIETRICH: Andrew is not with us.

Okay. Moving on to Task Force 2. The Technology Task Force. James Fruchterman?

>> MALE SPEAKER: I believe Jim is unable to join us.

>> CHAIR DIETRICH: Okay. Oh that's right He's in Africa.

>> MALE SPEAKER: In Africa, right.

>> CHAIR DIETRICH: He's the one on the beach with the drink.

(Chuckles).

>> CHAIR DIETRICH: Chester Finn, are you on the call, Chester?

>> MALE SPEAKER: No, Chester is not on the phone. This is John McKnight. I'm attending on behalf of Chester.

>> CHAIR DIETRICH: Thank you, John. Stephan Smith.

>> STEPHAN SMITH: Yes, I'm here Stephan Smith representing the Association on Higher Education and Disability.

>> CHAIR DIETRICH: Thank you. Kurt Herzer.

>> KURT HERZER: Yes, I'm here. I'm a private citizen, a medical student at John's Hopkins.

>> CHAIR DIETRICH: Bruce Hildebrand.

>> BRUCE HILDEBRAND: Hi, Gaier. It's Bruce Hildebrand. I'm Executive Director for higher education at the Association of American Publishers in Washington D.C.

>> CHAIR DIETRICH: Thank you. Mark Riccobono.

>> MARK RICCOBONO: Good afternoon, Mark Riccobono. I'm the Executive Director of the National Federation of the Blind Jernigan Institute. And I'm with the Commission representing the National Federation of the Blind.

>> CHAIR DIETRICH: Thank you Moving on to Task Force 3. George Kerscher.

>> GEORGE KERSCHER: This is George Kerscher. I'm here as an independent. But I'm president of the International Digital Publishing Forum, Secretary General of the DAISY Consortium and chair of the Steering Committee of the Web Accessibility Initiative.

>> CHAIR DIETRICH: Thank you. Ashlee Kephart. No Ashlee? Okay. Linda Tessler.

>> ASHLEE KEPHART: Sorry. Yes.

>> CHAIR DIETRICH: Ashlee, is that you? Okay You can just introduce yourself Ashlee and then after that you can go back to mute.

(Audio cutting in and out.)

>> CHAIR DIETRICH: Okay. Ashlee, you're breaking up. We can't hear you. So we'll just say that Ashlee is a student representative on the Commission. Ashlee Kephart.

Okay. Let's move on to Linda Tessler.

>> LINDA TESSLER: This is Linda Tessler. I'm representing myself as a private citizen. I am dyslexic myself and a scholar of dyslexia. I'm a publisher in the field. That's it. Thank you.

>> CHAIR DIETRICH: Thank you. James Wendorf.

>> JAMES WENDORF: Right. James Wendorf here. I'm Executive Director of the National Center for Learning Disabilities and Vice Chair of the Commission. Thank you.

>> CHAIR DIETRICH: Thank you. Okay. Moving on to our fourth Task Force, the Legal Task Force that's going to be presenting today starting with the lead, Maria Pallante.

>> MARIA PALLANTE: Yes, hi Thanks Gaier. Maria Pallante. I am the director of the U.S. Copyright Office and senior manager of the Library of Congress.

>> PETER GIVLER: Peter Givler, Executive Director of the Association of American University Presses.

>> BETSEY WEIGMAN: Betsey Weigman. I'm a staff attorney at the U.S. Department of Education's Office for Civil Rights and I represent assistant secretary for civil rights Russlyn Ali.

>> CHAIR DIETRICH: Thank you. I don't have the other names in front of me, Dave. The Federal representatives. But we should introduce them, as well.

>> GLINDA HILL: Yes, this is Glinda Hill with the U.S. Department of Education Office of Special Education Programs and Rehabilitative Services. And I'm representing assistant secretary Alexa Posny.

>> DAVE BERTHIAUME: Yes, Gaier This is Dave. I'm not sure if we have a representative on behalf of the Office of Postsecondary Education today. But just checking to see if either Holly or Shedita are on the call? And perhaps they will be joining us shortly.

>> CHAIR DIETRICH: Dave, would you like to introduce yourself, please.

>> DAVE BERTHIAUME: Sure. My name is Dave Berthiaume. I'm the Executive Director and designated Federal official of the Commission. And I work in the same office that Glinda does here at the Department of Education. The Office of Special Education Rehabilitative Services.

>> CHAIR DIETRICH: Thank you. Skip Stahl?

>> SKIP STAHL: Sure. Skip Stahl from CAST. I'm here with Mary O'Malley, Janet Gronneberg, Scott Lapinski. We are providing support and facilitating the activities of the Commission.

>> CHAIR DIETRICH: Thank you. Is there anyone who I have missed?

Okay. I would just like to remind all of the Commission Members that when you speak, please say your name so that the CART reporter -- let's see actually your name and who

you represent so that the CART reporter is able to have that as part of the transcript for today's meeting.

So I would like before we get started to thank very much all of the Task Force leads for all of the work that they have been doing. And in particular I would like to thank Maria Pallante both for all of the work that she's done and for her very balanced and inclusive style of ensuring that everyone's voice is being heard on the Legal Task Force. I really appreciate that very much.

>> MARIA PALLANTE: Thank you, Gaier.

>> CHAIR DIETRICH: So at this point I'm actually -- we're going to be turning the meeting over to James Wendorf for his reports and then moving on to Skip Stahl of CAST. So Jim.

>> JAMES WENDORF: Thanks, Gaier and thank you, everyone, for taking time to be on this call as well as members of the public. Just a couple of other things that we wanted to make sure people remembered that for public listeners you can submit public commentary on matters related to the Commission and you can find that site at AIMCommission@ed.gov. AIMCommission@ed.gov so feel free to do that and we gather all of those comments and they will become part of the official record of the Commission's work.

We wanted to spend time at this part of the meeting talking about where we are. And really do an update on the status of the report. Where we are against the timeline. Discuss the various Task Force documents. And I know I am not alone in finding it difficult sometimes to keep track of which version is coming through. Whether it's in red line or whether it's not.

And so I think we should have some discussion of that. And I'm going to ask Skip in particular I think to give us an update on what it is we actually have in hand as documents. Of course today as we all know the focus is on the Legal Task Force. And the document that was just sent out.

So we want to -- you know I think we look at this meeting today very much as preparation for our face-to-face in Seattle in just a few weeks so we can make the most of the time that we'll have together. And in the next several minutes we'll want to have some discussion and questions and answers among us about how we get to that point and make the most of the time.

Just a reminder, if I could. You know, back to the role of the Commission, I find it very helpful to look at our charge. Keep it in mind. This issue that Gaier had mentioned of a comprehensive study I think is more important than ever for

all of us to keep in mind. Comprehensive meaning wide ranging diverse points of view.

We're focused on making recommendations. Not just saying what's what but actually saying what we think should happen or should be considered.

And so a large part of our effort is to highlight those issues. So that Federal and even state governing bodies can take what it is we are recommending and studied and put it into action.

We're at a place -- we're at a place where all of us who have participated in the Task Force, we're at a place where I think the variety of viewpoints is obvious. Obvious that there's diversity. There's sometimes disagreement. And I don't think the disagreements or the different ways of approaching some of the issues we've said we need to tackle should come as a surprise.

We represent diverse constituencies. And that's true for those of us, myself included, who represent the disability community. It's not one community. It's a variety of communities. Within, you know, my own area of learning disabilities. I can tell you that there is -- there is often disagreement. There's a shared understanding of goals and missions where we would want to be. There's often disagreement about the steps that one should take in order to achieve those goals.

That's just -- to me it's a given.

And so one of the things, you know, we should discuss is you know what we're trying to do. And what we're trying to build as a group through the Task Forces. But soon the Commission as a whole. Because the work of the Task Forces is drawing to a close. And it will be the Commission itself as an entire body that will actually be making decisions about what the report finally is.

My own sense is that we're probably not going to get full agreement on a lot of issues. Gaier and I have discussed this. We have discussed it with several of the Task Force chairs, with Dave and Skip and others. And you know we do believe that the track that we have taken so far is valuable and we should stick with it until we decide that it makes sense to do something else. And that's really pursuing a consensus building process.

And attempting to reach some form of agreement, whether it's on principles or in some cases very specific types of recommendations laid out in a document.

I mean I think we need to give ourselves credit for having achieved consensus on a number of principles. And we'll be discussing you know in a few minutes how we best do that. And also zero in on those issues where consensus has not been achieved. And may not be achieved. And so we'll want to -- we'll want to discuss how to handle that.

Our own take on this, our recommendation is that if we cannot reach agreement, then we need to find ways to highlight areas of disagreement in the final report. That's we think valuable to do.

And I really -- we're totally open to thoughts from the whole Commission about this. But I think we have -- we're at a place where this discussion I think is not only going to be helpful but is very much needed.

So let me stop there. And open this up for discussion about consensus building. Where we are in this process. And how we handle disagreement, different approaches, as we move toward developing a document itself.

The floor is open.

>> CHAIR DIETRICH: I wonder if you might reframe that as a specific question.

>> JAMES WENDORF: I -- okay. Well, let me put it this way: For those of you who are actively engaged in the Task Force in putting forward alternatives to whatever is being presented, do you feel that consensus is being reached on some of the things that you're proposing? Is it working or do you feel that building consensus and attempting to get agreement is not working? Let me put it that way.

>> PETER GIVLER: Jim this is Peter Givler Association of American University Presses. May I respond to that.

>> JAMES WENDORF: Yes, please.

>> PETER GIVLER: Just going back to my own experience as part of spending almost three years on the Section 108 study group which was charged with coming up with a series of recommendations for revising Section 108 of the Copyright Act, it seems to me that we -- both things are going to happen. There are going to be areas where we do find that we have a consensus. And we do agree. And we can agree on certain things.

We are also going to find that there are areas where we don't agree and I think that when that happens, one of the most useful things this report could do is just highlight those

areas of disagreement and tease out or articulate rather the -- what the terms of the disagreement are.

This is very, very useful information for anybody who is going to come after us. And try to use the report to put into action. It let's them know sort of where the -- it gives them a quick feed on where they can expect people to come together and agree relatively quickly. And where the sticky parts are that they are really going to have to work on.

So I think we have both. And I think that that's my own reading of it. It certainly is the way things are developing in the Legal Task Force. That's what we're doing is trying to acknowledge -- well just recognize consensus when it's there. And when it isn't, to point that out. And point out what the terms of the disagreement are.

>> JAMES WENDORF: Good. That's helpful, Peter. Other thoughts about this especially from those of you who have been engaged in it.

>> MARIA PALLANTE: Well this is Maria. And as I said I chaired the Legal Task Force. And I'll just follow Peter by saying I would really like to recognize the members approximate of all of the Task Forces but mine in particular because I think people have first of all done an extraordinary amount of deep thinking on this. And to the best of their abilities I think all of our abilities, try to learn from each other and have tried to come to the table really willing to kind of listen and to move forward. I think there's quite a lot of agreement at high levels. And I think some of the stronger disagreement comes down to very detailed nuances about the way things are presented. And for example is it being presented as the only solution? Or as a solution that we might have to get to if another solution doesn't happen first.

So I actually am looking forward to the discussion today because there's no reason not to be very optimistic about where we are today. I think from where I sit, there's going to be a very, very valuable report produced in the end. And it's going to be a resource that lots and lots of people will turn to for a very long time. Very comprehensive. Very much showing how technology and best practices and the market and legislation are interrelated not to mention resources. And I just think it's been a real privilege. And I think I'm just extremely pleased to be part of it.

>> JAMES WENDORF: Thank you, Maria.

>> LINDA TESSLER: This is Linda Tessler.

>> JAMES WENDORF: Oh go ahead, Linda.

>> LINDA TESSLER: I wanted to say that some of the questions that have come up that I'm personally struggling with in the Task Force about the wonderful idea of creating material that doesn't have to be converted but in the original form that the print disability community can access and there's no additional expense I mean what marvelous idea that's on one end and on the other end of my conflict I guess other people's too I don't want too much regulations I do want to support small business I want to support small publishers I don't want legal regulations to be so cumbersome or the possibility of lawsuits to be so dire that people don't get into business. Don't create small businesses. And even for the big businesses we're not really interested in destroying them through lawsuits so I think today's meeting concerning the legal committee I'd be very much interested in.

And I think, you know, what it has to say and what is possible and what is doable, be what is practical to be a pragmatist in the end and to find some middle road between these two polarities that I'm experiencing people talk about and how do we come to meeting of minds I don't think we have found a good idea to compromise with that yet. So I'm very interested in this meeting not just for that issue but for other issues, as well what is reasonable possible what is workable what is feasible what is practical.

>> JAMES WENDORF: Thank you, Linda.

>> LINDA TESSLER: You're welcome.

>> TUCK TINSLEY: This is Tuck Tinsley I'm on Task Force 1 and that's the one I've been most involved with. And I have not experienced polarities as Linda has indicated. I'm much more along the lines of Maria's comments. Where we have listened to each other. We have moved forward and really haven't had any real major issues in looking at best practices. Of course we're not where we would like the world to be as far as best practices. But our recommendations take that into consideration. So I don't see the real polarities at this point.

>> JAMES WENDORF: Okay. Thank you, Tuck.

Other thoughts?

>> GEORGE KERSCHER: This is George. I just wanted to echo Peter's statement. I thought that sounded about right, that there's going to be areas of complete consensus and others where there's disagreement. And we need to highlight those things.

And I think that we should be practical. In our approaches and understand that when we're talking about accessible versions of instructional materials, that it will not necessarily be something that works for all people. But it's you know hopefully we can get to a point where the materials are working for a major percentage of people, which reduces the amount of work that has to be done for some of these materials.

So you know, kind of flipping it from a 95% is not accessible to 95% is accessible but 5% still needs to be hand tooled.

>> JAMES WENDORF: Thank you, George.

>> LINDA TESSLER: This is Linda Tessler again. I did have a very encouraging note last night. I went to a public hearing somewhat to say a discussion here in Pennsylvania around the Philadelphia area. And the students felt very good about the -- the college students seemed to feel very good about the access that they were having to recorded materials. The ones that computer savvy were very excited about what was happening --

>> JAMES WENDORF: Have we lost Linda?

>> CHAIR DIETRICH: I fear we have.

>> MALE SPEAKER: It appears we have, yes.

>> JAMES WENDORF: Okay.

Linda, if you can hear -- we have lost her --

>> LINDA TESSLER: Did you hear the end of my comment.

>> JAMES WENDORF: Okay. You're back.

>> LINDA TESSLER: Yes, I'm back. Did you hear the end of the comment.

>> MALE SPEAKER: We lost the end Linda.

>> JAMES WENDORF: No you said you were encouraged about what you heard at a public event about students having access especially those who were computer savvy.

Okay. We're not hearing you, Linda, if --

>> LINDA TESSLER: I'm sorry. Yeah, I don't know what's going on. It's the technology. But what I keep trying to say is that the college students were very excited about the technology and that they did have access to a lot of the printed material and the requirements in their courses and I just wanted to give the Commission that feedback.

>> JAMES WENDORF: Good.

>> LINDA TESSLER: That unsolicited they were very happy with what they had access to.

>> JAMES WENDORF: Good. Thanks.

So if I could take a stab at summing up based upon what Peter had said and George and a couple of others and Maria, there appears to be an understanding and support for the report. Acknowledging those areas where there is disagreement. Where there are other options presented for addressing a particular issue. I think I've heard people say that we think it will be a stronger report for having done that. If we didn't do that then my own feeling is that we would end up with recommendations that were not very interesting. But instead based on lowest common denominator. Instead of something that would be much more powerful and robust. Even if it's a recommendation that represents a couple of different ways of being executed or enacted.

So we will -- I think that helps us as we move forward. I would like to ask Skip to give us just an update on where we stand with documents. And how documents are going to be shared going forward, especially as we move toward the Seattle meeting.

>> SKIP STAHL: Sure. This is Skip. I thought it was ironic, Jim, when you mentioned about confusion about different versions of documents since I was the one who sent out the wrong version of the legal document first thing this morning and then had to do a mea culpa and send out the correct one so I apologize for that.

So let me just kind of reframe our working goal. And then tell you where we are. And what we think are the most kind of pragmatic next steps.

The Commission is charged with providing a report to Congress by the end of September 2011, which is close upon us. And our role here at CAST is to provide as much support in generating that as possible and as you all are willing to let us do to get content to you for editing and revision and et cetera. So we had initially set a target of June 15th for a first draft. And we met it. Not quite in the way that I had envisioned. But we essentially have quite a strong collection of documents. And I'll just kind of give you a sense of what we currently have in hand.

We have a background section draft. And that background section which I believe is available to everybody on drop box, it's approximately 20 pages. It's really designed as kind of a relatively high-level overview of the entire climate.

And it's really designed to orient someone totally unfamiliar with this entire challenges associated with accessible and instructional materials in postsecondary education to give them a sense with why is this important who the students are. What the process is for accommodations and provisional materials. Who makes those determinations. How the materials are acquired. What the materials look like.

And so that's in Version 3 of that working draft. And we certainly welcome in comments or statements or edits on that document.

There is an entire section on legal background that has not been folded into that entire background section. But we do have two major pieces on legal background. Both from the Legal Task Force, Maria and Chris, thank you very much. We have a section on the Chafee copyright exemption and then an overview of all of the little aspects. And we're finalizing the section on the NMIS/NMAC in IDEA 2004. So we have a collection of background documentation. And then for each of the Task Forces we have generated -- Task Forces we have generated some smaller research reports I just asked Scott how many citations we have in the RefWorks database we have up to about 380, many of which include the full article for reference points and obviously we won't cite every one of those but we're trying to keep abreast of everything that emerges national center for statistics just released their report on postsecondary students in higher -- with disabilities in higher education that was published today so we have that in hand and then what we did -- so we have a lot of background information.

Much of it kind of pulled together in the background section and the legal background. And then we asked each of the Task Forces to generate a draft report. And what we did was we provided them with a fairly elaborate and structured outline as to how we wanted to see that information come in and that was really for us internally to make sure we were covering all of the bases and asking each of the Task Force chairs and Task Force members to consider a lot of issues in the context of their Task Force. And we knew that as those reports and revisions were coming in that there was going to be a lot of overlap and in some cases redundancy because a lot of the discussions within the individual Task Forces that actually emerged.

So we have those working drafts from each Task Force. So we have a number of documents that I kind of think about this almost right now as we have the separate pieces of a quilt and we kind of lay them all out on the floor and there's six or seven different documents that we need to pull together. And I

think that the logical next step from my perspective and I've been talking with a number of people over the last few days about this as a strategy. As you'll hear in a minute Maria's Task Force has crafted a series of clearly stated preliminary comprehensive recommendations. And what we are now proposing to do next be and actually have begun that process is to look at the existing documents from each of the three other Task Forces, market, technology, best practices. And extract from them a set of preliminary comprehensive recommendations following Maria's model so that we end up with essentially four recommendations documents.

What we would then do is distribute that, each of those recommendations documents to the respective Task Force members to make sure we were capturing each of the recommendations generated by each Task Force. And once we get an endorsement from each of the remaining three Task Forces, we would then sit down with those recommendations documents and begin to blend them together into a single document which we would then distribute to the Commission. It's my impression at this point that going into the Seattle meeting having a document that clearly and without any ambiguity identifies all of the outstanding issues gleaned from the recommendations from each Task Force would really facilitate both the discussion and the decision making arriving at whatever consensus could be arrived at and identifying whatever points of dissension continue to persist.

That then would be incredibly helpful for us immediately following the AHEAD meeting to take whatever clarification that we could glean from that meeting and put together a single working draft hopefully in the two weeks following the AHEAD meeting. So that some time by mid July -- mid to -- like the third week of July and this is really an approximation because I haven't timed it all out but it would be great if we had a single document that incorporated the background section the legal background section and then the recommendations with perspectives as the Commission wants them presented into a single document that we could then begin to really work through so we wouldn't even -- we wouldn't really begin wordsmithing until that point.

Our goal is to have a final draft by probably the latest that we would want to have continuing edits is somewhere around the second week of September. And the reason for that is that we want to produce multiple accessible versions of the report. And we need a couple of weeks to make that happen. So there would be -- we are perceiving that there would be an edit

lockdown some time probably towards the end of the second week in September.

So I'm going to just stop there. And see if anybody - see if anybody has any questions.

>> GEORGE KERSCHER: So this is George. The idea would be to have one set of recommendations that is merged from the four different groups?

>> SKIP STAHL: Yes.

>> GEORGE KERSCHER: Good. You know, I don't know if the background -- I haven't read through it. The background document goes through anything about the history of digital publishing and it's evolution say in the last dozen years.

I'm wondering if that would be something for the background. Or -- it certainly is relevant in the market discussion.

>> SKIP STAHL: Yes. No. I agree. I'm trying -- I haven't read the background document in a couple of weeks. But I would be -- I mean there are two ways we can do this. You could take a scan of it. I can certainly send it to you. And it's pretty well structured so you can see where the different sections are. And if you -- if you want to take the time just to go through that and maybe suggest where we might insert something that would be terrific.

>> GEORGE KERSCHER: Okay and it's sitting in the drop box so you don't have to do anything.

>> STEPHAN SMITH: This is Stephan from AHEAD. I wasn't taking notes as best as -- as fast as you were talking. Would you mind reviewing the key dates. And feedback timelines one more time.

>> SKIP STAHL: Sure. And this is -- Stephan this is with the exception of the September date, it's approximate so let's work back from September.

The report is due to Congress the end of September. I believe the 27th. Dave probably has the date firmly fixed in mind. But that's the one I'm thinking of because it has to be a year from our first meeting. So in that September 27th neighborhood, we're done. We have to have a report submitted to Congress.

So working backwards from that, we need at least -- you know somewhere in the neighborhood of two or three weeks to really make sure we can generate more than simply a Microsoft Word or a PDF version of this document.

So you know, an audio version, a DAISY version, a Braille version. All of those different components.

So that means that we need an edit lockdown some time in the range of the end of the first week of September. That we really don't want to accept any additional edits beyond that because we're going to go into kind of publication mode.

So working backwards from that, I'm ideally thinking we need -- once we have a single working document draft that I would like to have somewhere in the neighborhood of a six-week period, six to seven weeks, where we can really do some editing. That would be a good cushion.

So that means that from the -- like the third week of July we need to have that single document put together -- knit together in some fashion.

So that means working from that that if we generate a list of recommendations for the Commission to review in Seattle, that we would then ask the Commission to go through each of those recommendations and make some deliberation or determination as to how the Commission wants those presented. So that following the AHEAD meeting we can begin pretty aggressively to knit together all of the pieces that we've got into a single comprehensive document.

>> BRUCE HILDEBRAND: Skip this is Bruce Hildebrand. So once you get this single document knitted together, that goes back out for further comment.

>> SKIP STAHL: Oh, you bet. Yeah. And in fact you're one of the lucky few who has expressed an interest in editing. So we're hoping that interest persists because we're going to need a lot of help. Yeah, and I think that our intention would be once we have a single working document that that gets distributed out to the entire Commission.

>> BRUCE HILDEBRAND: What are you shooting for for sending that first draft of a comprehensive document out.

>> SKIP STAHL: I don't have a calendar in front of me. Hang on just a minute. Let me bring that up.

>> DAVE BERTHIAUME: Skip this is Dave Berthiaume. Let me jump in. We haven't had a chance, Skip and I, to discuss all of the dates. So I think that there may be some flexibility or we will have to nail down specifically. And then communicate with the entire Commission on the September date because we've got to keep in mind that we have a meeting of Task Force chairs out at Dallas airport that we need to work into that, as well.

But the current plan is to focus on recommendations across all of the Task Forces in Seattle. Take those, incorporate those into the rest of the report. Circulate the report some time mid to late July. And then there would be I would say at least three weeks. Maybe a month of time for members to comment, to edit. We haven't nailed down that date yet. And then we would incorporate those comments and bring them back together.

>> BRUCE HILDEBRAND: I'm being a little selfish if you remember that we exchanged e-mails on when can somebody take a vacation this year and I will be gone the last two weeks of August I just want to make sure I've got time in there.

>> SKIP STAHL: Yes, Bruce, this is Skip my goal would be to get that single working document out to everybody somewhere in the neighborhood of the 25th or 26th of July. If we can do it before then, we'll do it before then. I just want to give us some wiggle room for making something that's actually readable and contains all of the necessary components.

>> BRUCE HILDEBRAND: Okay. Thank you.

>> SKIP STAHL: You're welcome.

>> DAVE BERTHIAUME: This is Dave. I just want to be sure after all of the discussion that folks are clear on the timelines and also on what we hope to accomplish in Seattle.

So please weigh in now if there's any other questions.

>> STEPHAN SMITH: Yeah, Dave this is Stephan at AHEAD. So once we have -- like the only piece that I've actually seen fully are 1, 2 and then this morning No. 4.

I assume you'll want us all to give in a substantive written comment on the sets of recommendations prior to everything being put together. Is that correct?

>> When you say prior to everything being putting together you mean prior to going to a final report in September.

>> STEPHAN SMITH: At what point do you prefer a substantive input do you prefer that sooner rather than later or later.

>> DAVE BERTHIAUME: I don't think that we're going to have a written report draft for comment until mid to late July. So that -- I mean that will be the starting point. That's our plan.

>> STEPHAN SMITH: Okay.

>> SKIP STAHL: Yeah and Stephan, you had suggested an online system like SurveyGizmo and I've been talking with Scott about that. And I haven't had this conversation with Dave yet. But once we get a comprehensive -- a single comprehensive set of recommendations, it may well make sense at that point to use something like SurveyGizmo and to parcel out each of those recommendations as a separate item and give people an online resource for making comments that we can collate and pull together and use SurveyGizmo's automation capabilities to help do that.

So I think over the next couple of weeks we're going to be really finalizing -- putting together some strategies for ensuring that everybody has multiple ways of getting their voices heard.

>> STEPHAN SMITH: Okay.

>> DAVE BERTHIAUME: Anything else? Any other questions about the process, the timeline? That we can get into now but we'll be following up with more information as Skip you and Dave look at the calendar so you'll be getting that back out to the Commission, right.

>> GEORGE KERSCHER: This is George with one just observation the tech companies are not represented in this group. And we -- I think we're going to be making recommendations about the accessibility of technology products, you know be it reading systems or online education systems. That whole flock of things.

I don't think that's a problem personally. But it's from our perspective that these companies need to provide accessibility in their tools. And products. And --

>> MALE SPEAKER: George I just found out from a breakfast this morning that SynGage (phonetic) has rolled out a whole new product maybe in the vein of Inkling I'm not sure their people are going to explain it to me next week they are going to do a webinar and stuff but it is totally proprietary.

>> GEORGE KERSCHER: Proprietary isn't bad just so long as it's accessible.

>> MALE SPEAKER: George believe me you think I didn't ask that question right out of the box how accessible is it if I have to hand this to George I don't want to get my head handed to me in return and they said that was one of their key priorities when they put that together but the point is I'm beginning to find out by you know the back channels and talk there's all kinds of proprietary stuff being developed out there that until it walks out and says hello we're not going to know

it. I'm real surprised. So I really am very curious, too. I mean you -- we talked about Inkling on the last call. I didn't know all that was going into that and how accessible it was going to be I have a demo coming up on that. I did a full-fledged demo. I bought on iPad 2 it's in transit now to load it on.

>> DAVE BERTHIAUME: Bruce excuse me this is Dave. I need to -- I'm sorry I need to jump in excuse me for interrupting. We have a presentation by one of the ethics attorneys here at the department a follow-up memo to some issues that came up at our first meeting and she's holding she's on the line and I'm just trying to keep an eye on the timing and on the agenda. And I think George makes a good point. It's something we can circle back to. If not today then certainly in Seattle and we'll have a chance to explore that coming.

>> BRUCE HILDEBRAND: I don't mind the interruption, Dave. I think it's just up to this point because there's sort of a void in here I'm beginning to know more and more about and George knows a heck of a lot more about.

>> DAVE BERTHIAUME: I agree, it's a good point, if we're okay and if there aren't any other comments from Commission Members about the general issues of timing and report writing and our strategy going forward for the next three months, I would like to go ahead and introduce the ethics attorney.

And her name is Linda Amarsingh. As I mentioned she works in the department in the ethics division. She's following up on a memo that was written for our members. And was circulated earlier this week. So hopefully you have that. And I would like to turn the floor over to Linda and then of course if there's any questions at the end she'll be here and able to assist us. So Linda, if you're on, can you please go ahead.

>> LINDA AMARSINGH: Thank you, Dave. Good afternoon ladies and gentlemen. like said I'm your ethics attorney. I do apologize for the interruption. From what I can hear you have very important work to conduct today. So I'll try to keep my brief as brief as possible.

I believe everyone should have a copy of the context of interest memorandum that Dave referenced. It's addressed from Susan Winchell she gave the previous ethics brief. So if you don't have a copy, please send an e-mail to ease Dave or myself and I can give you my contact information and I can send this information to you as soon as possible. Basically the memorandum talks about the basic concept of interest restrictions that affect you in conducting your work.

It is my understanding that there are some representatives. And there are also some special Government employees.

And so in keeping this as brief as possible, I decided to just go through the broad categories of conflicts that were raised in the memorandum. If at any time you have questions to not take away from your meeting today, I'm going to give you my e-mail address right now. And my telephone number. By all means use it and e-mail me or Dave and forward your questions to me.

That e-mail address is linda.am -- as in Mary -- A as in alpha R as in row Mya S in Sierra I as in India N, November, G, golf, hotel at ed.gov.

Okay. Conflicts of interest as it goes to your duties pertain to those interests that could potentially arise that affects both your personal conduct and your official conduct. And this applies more to SGEs than they do for representatives for the reason being representatives aren't as bound by the ethical standards as our SGEs. SGEs are considered employees, hence the E in that acronym. Representatives are not -- representatives on the other hand are expected to represent this infraction of the community. Not necessarily the department's interests.

That being said representatives are also liable for some ethical principles whereas the SGEs are to comport with ethical rules.

>> DAVE BERTHIAUME: Linda I'm sorry this is Dave could you just take one quick step back for our members who -- Susan covered the definition of special Government employees back in September. But some of the members may have forgotten that very clear definition. That would be great. Thank you.

>> LINDA AMARSINGH: Certainly. An SGE is a special -- is special only because you have a very specific and -- specific role that you play for the department. Meaning your work as outlined in your charter is a very specific work. And so not only is it specific in its nature, it's also specific in the time. And so SGEs generally work for a fraction of what is it 160 days out of a year I believe. And so you are special in both time and constraints of what your job or your role is. And that is outlined in your charter.

According to your charter, your role is basically to produce a study and issue a report or recommendations as to accessible instruments and materials. I'm not going to go over your role because I'm assuming that you're all familiar with

what your roles are at this point since we're just prior to me calling in I kind of heard a little about the report being issued.

Let's see. So back to the conflict of interest rules that apply to you, I'll go through the most significant ones that apply in your position you cannot use your department title for personal financial gain and that refers to personal financial gain also with yourselves financial gain in this respect since it deals with information that may not necessarily be public until your report is issued could be selling material, giving interviews that you are paid for. Being part of a publication as an author or co-author and being paid for that work. Those are the kinds of very obvious personal financial gain. The not so obvious ones or rather the not expected ones are once that influence your non-performance in your capacity. Think of these as your quid pro quo type things. It's a matter of opinions from a third party outside the committee. And you will get some financial gain that's obviously for personal financial gain outside the scope of what is allowed or permissible. The second most important rule is the prohibition of third parties -- sorry; representing third party interests and I kind of covered that previously but I'll just go over that again.

You may not use your position on this committee to lobby for a position outside of this while you're conducting the department's work.

In other words, you couldn't switch sides on the issue that you're working on. And these are the post governmental restrictions and concerns that I believe Susan has already mentioned because it's reiterated here in that memorandum that I mentioned.

The second set of rules that apply to you are what we refer to as the standards of ethical conduct. And there are three -- I'm sorry; there are four standards and I'll just quickly go over those. First you may not solicit funds, money or support from any person or entity that is likely to benefit from your official duties.

Secondly, you are not permitted to accept a gift from any prohibited source or a gift offered to you because of your position on the committee. For the Department of Education a prohibited source is any entity, organization, person who works with or for the department or seeks to do any kind of business.

So just most obvious ones would be institutions of higher education. All institutions of education that seek accreditation. Your banks, your financial aid type

institutions. They are fairly obvious for us. And so those are the organizations that are considered prohibited source.

Third, you are prohibited from misusing your position on the Commission to seek advantage to yourself or for another.

And in Susan's memorandum to you, she talked about although your work on the committee is considered broad and not particular matter -- meaning it affects a very broad segment of society and it wouldn't fall within that specific and discrete identifiable class of people that particular matters generally refer to, in this instance, here we're talking about the potential that you could enter into contracts or -- and in one of my other committees we are now talking about hiring technical writers and things like that.

And so in those types of situations, it's much less broad because now you're considering a specific person to hire which is a contract. And -- in a nutshell. And so you couldn't use your position to either influence the decision to hire a particular person or not hire a particular person for your own financial gain or in spite of your financial gain.

And lastly, I'm not sure if this committee has this issue. At least I haven't been very familiar with seeing any of this just about yet.

So published works that reference your membership must be accompanied by an agency disclaimer. And this is fairly out of the agency now that social media and things like that are popping up everywhere Public Works also refer to your Facebook blogs or your personal blogs or Web sites that you maintain if so maintain one.

Any opinions must be accompanied by the scheme or words to the effect that this is my personal view. It does not reflect the view of the Department of Education, ACAIM or myself as a representative as ACAIM to summarize you SGEs are considered Federal employees and therefore you are subject to the criminal conflict of interest rules, and the standards of conduct that I just covered. I'm going to switch over now and talk to my representative.

Dave, is my understanding correct that we do have some representatives.

>> DAVE BERTHIAUME: Yes, that's right. Our Commission is split almost 50/50.

>> LINDA AMARSINGH: Great so this is fairly brief representatives as I mentioned you are not a Federal employee or

an employee of the department. But some of the rules still apply to you first you must comport yourself with integrity as to not to trade upon your Commission for the committee or for your personal private gain and I don't foresee that being an issue for this committee only because the work that you're doing is far beyond the private gain of yourself. I think it's so general and so broad that it will not be an issue.

But the second one could. Where you may not use your service on the committee to promote yourself or any service that you may offer in your -- let's call it your day job outside of your work on ACAIM. So for example you own some type of consultancy firm. You couldn't influence the committee to hire your firm to represent yourself to the committee in that respect.

Lobbying is the second big issue that comes up for representatives on these committees. Lobbying, you may not lobby on behalf of yourself in your official capacity. You may, however, lobby as a committee, meaning ACAIM can lobby directly with Congress but only on official ACAIM matters and even if you choose to participate in official lobbying, it has to be through two levels of prior approval. The first one -- the first level being the department which is fairly obvious and then seeking approval from ACAIM and voting on what should be -- you would be lobbying on but obviously once the department says yea or nay, it's generally okay to go forth.

Let's see lobbying in your personal capacity is prohibited again on behalf of ACAIM or the department however you could lobby in your own personal time and your own personal capacity.

>> LIZANNE DeSTEFANO: Lizanne DeStefano.

>> LINDA AMARSINGH: I beg your pardon.

>> LIZANNE DeSTEFANO: Lizanne DeStefano just joined.

>> DAVE BERTHIAUME: Thank you, Lizanne.

>> LINDA AMARSINGH: And the final I'm on my last page. Political activity is governed by the hatch act. In your official capacity as an ACAIM member you may participate in partisan political activities however you are not permitted to use department funds to do so.

In your personal capacity you may lobby on your personal time with your personal resources and again it says here I should repeat you may not use Government resources or equipment to do so.

I'm going to give you the general ethics number. And so you can call in with any questions that you don't think I didn't cover appropriately or you want clarification that's 202-401-8309.

Thank you for your audience. And if you have any questions right now, you're more than welcome to introduce yourself and ask them.

I take the silence as no.

>> DAVE BERTHIAUME: Linda, this is Dave. I just wanted to thank you for your time and your presentation and everything that you talked about here in terms of the cautions, whether someone is a representative or special Government employee, everything expires once the Commission goes out of business. We issue our report and then move toward should get down. Isn't that correct.

>> LINDA AMARSINGH: That is correct except for the post employment restrictions for SGEs. Your SGE members are still under a cooling off period for one year.

And so they couldn't switch sides for instance on whatever the proposals are and represent another organization back to the department. Or to any Federal agency saying something contrary to what is in the report.

>> DAVE BERTHIAUME: Okay. That's a helpful clarification. Thanks.

>> LINDA AMARSINGH: You're welcome. Well, if that's all, have a great weekend, everyone. And thank you.

>> DAVE BERTHIAUME: Thanks.

>> LINDA AMARSINGH: Goodbye.

>> CHAIR DIETRICH: Thank you.

>> DAVE BERTHIAUME: Gaier I'm turning it over to you I'm not sure if we want to start our break five minutes earlier or if we want to jump in and start some of the legal discussion.

>> CHAIR DIETRICH: I think let's go ahead and just take a slightly earlier break. We only had a ten-minute break listed. Let's see if we can go ahead and let's do a 15-minute break and then maybe we won't need the more than just the 5-minute break later. Maybe we won't need that.

And just a reminder for everyone on the phone as we go into this break, if you wish to send comments or to send us stories about what's happening for you or for your students or if you are -- not from within education but maybe somebody who

works, a parent, please, as well feel free to send that to us that's at PSC --

>> WOMAN SPEAKER: Right next to the ironing board.

>> CHAIR DIETRICH: Linda you might mute. PSC@CAST.org. PSC like Postsecondary Commission@CAST. Org. so we will go into a break now and let's please come back from the break at 11:25. Thank you.

(Break.)

>> CHAIR DIETRICH: Okay. It is 11:25. And I would like to again thank everyone for being on the call thank the public, as well, who have joined us on the call. And to remind anyone who is listening in from the public that if you have comments or questions, we would be more than happy to receive those. And the e-mail address to send them to is PSC that stands for Postsecondary Commission at CAST, CAST.org. PSC@CAST.org. Okay. I wanted to let everyone know that my Vice Chair James Wendorf had to be offline for a little while. He will be returning at 4:00 o'clock p.m. Eastern Time which is I keep having to add and subtract in my brain and that gets a little confusing when I'm trying to talk at the same time so Jim will be back on at 4:00 o'clock Eastern Time.

Now, at this point I would like to turn the discussion over to our Legal Task Force Chair, Maria Pallante. Maria, are you on the line?

>> MARIA PALLANTE: Hello.

>> CHAIR DIETRICH: Yes I can hear you.

>> MARIA PALLANTE: Sorry; I had my mute button on. Thank you, Gaier. And just so I'm clear, we have about how long to -- for this first part of the afternoon.

>> CHAIR DIETRICH: You have a little over an hour. You have an hour and five minutes it goes until 3:30 eastern.

>> MARIA PALLANTE: Okay thank you very much let me start by asking who from my Legal Task Force is on the call, Peter Givler from the American university presses. Hello? Peter, we've lost. Mark from NSD.

>> MARK RICCOBONO: I am here.

>> MARIA PALLANTE: And I know James Fruchterman unfortunately is not with us from Bookshare. I think that leaves our vice president James Wendorf you just explained isn't with us at the moment but we should have Dave and Skip, correct.

>> BETSEY WEIGMAN: And this is Betsey I'm also here.

>> MARIA PALLANTE: Great so the Legal Task Force as with the other Task Forces have been talking through an awful lot of complex issues since September and started at a very high level. Really debating what are the laws at play. What is the landscape, et cetera. We have done some of that on previous phone calls with the public and some of our previous in-person meetings and once we get through that which I think really took us up until January we started to talk about what are the precise kinds of recommendations that we were really kind of coming to. And those fell into a couple of different buckets some are just general observations about facilitating the market. Others are more technical, what's the role of DRM digital rights management for example others are legislative potentially and some are regulatory and as with almost everything that this Commission has been discussing since Day 1, they bleed into the jurisdictions, so to speak of the other Task Forces to be expected.

And I think ultimately will make for a very robust report. So what I would like to do now is go through kind of the state of where we are today. To pull in the other members of the Commission so that you know -- so you know kind of where we are in June and I wanted to start by saying or repeating I should say that the discussion document that you all have is a comprehensive very inclusive document that includes pretty much everything that any member of the Task Force has in good faith put on the table as a possibility. It is not perfectly refined. That's part of what we're going to be talking with you today about. Just to see what we have missed, what other perspectives might be there. It's perfectly possible that we have missed something all together that's not anywhere on here.

The document because of its nature includes some evidence of the discussion across spectrums so you might see and I'll go through these a recommendation that starts out with some members believe this. Therefore, they suggest this. Others cautioned about this or opposed it from the outset because of this concern.

And what I would like to try to do today after going through very generally the recommendations as you find them is focus on the ones where there's some real disagreement. And see if we can work through and if we can't do it see if we can find a way to retain the good faith place from where the recommendation may have come. And find a way to include it on the theory that in the report ultimately better to have the diversity of views represented in context with the pros and cons and different points of view than to not have them in there at all. And just I know Jim set this up very nicely in the

beginning but much better to have an intelligent report that shows the real depth of discussion that this Commission has really had up to than to end up with a very short document which really reflects the things we agreed on which I'm afraid would be very high level so I'm going to start with that working from James Wendorf's recommendation and Dave you might want to remind me why we're starting in the middle of the document.

>> DAVE BERTHIAUME: Maria, this is Dave. I wanted to start with some of the recommendations that flowed more directly out of -- out of the Legal Task Force terms of the discussions that we've had. And then as you noted in your draft there's general language and market-based recommendations and if we can get to those later depending on the progress that we're making, I think that would be great. They would also fit very nicely I think into our vision for how Seattle is going to unfold. But I leave it up to you in terms of timing and how we're progressing.

>> MARIA PALLANTE: Okay. Let's see what we can do that makes sense to me I'll just say that I think it is true that the Legal Task Force in general started from the premise like I think most of the Commission that it's best to have a market that is functioning robustly and competitively and with the availability of accessible formats for everyone at the same time. At the same price on the open market.

But to the extent that does not work or is not feasible, at least for some kinds of works, then how does the law kick in to facilitate some other kinds of accessible formats.

So if we're clear that that's kind of the general framework then I will start right in the middle with some of the regulatory stuff.

So let's start with Recommendation 5. And this is the June 21st draft. And Recommendation 5 was put on the table by one of our members James Fruchterman who is unfortunately not on the call.

>> WOMAN SPEAKER: Excuse me Maria I don't mean to interrupt but would it be possible to read the recommendation as well so everyone is clear where we are, please.

>> MARIA PALLANTE: Yes, I was just about to do that. So Recommendation 5 says -- that's okay. Recommendation 5 put on the table by James Fruchterman of Bookshare is a regulatory recommendation. Before I read it for those who are fortunate enough to not toil in the U.S. code for a living regulations implement the law and for Federal agencies like the Library of Congress or the Department of Ed they will implement very

precise sections of the law that that agency is responsible administering is in my case in the Copyright Office we have tons of regulations that reflect the Copyright Act because we are charged with administering the Copyright Law. The Library of Congress is one of -- as one of it's consultant parts has the National Library Service for the Blind & Physically Handicapped and because it is charged with administering the programs of the National Library Service for the Blind & Physically Handicapped, it has to have certain regs implementing how that's going to work.

One of those is a reg that is later reflected in the Chafee Amendment. So let me read the recommendation. It says: The Library of Congress should conduct a rulemaking -- and I'll explain what that is -- reviewing its regulations for the National Library Service for the Blind & Physically Handicapped, which interpret and implement the scope of the beneficiary population entitled to services under the Chafee exception in Copyright Law.

Now, to be clear and keeping in mind that we wrote some of this quickly, technically what that reg does is implement the Pratt-Smoot Act from 1931 which is then referenced in Section 121 of Chafee Amendment which is part of the Copyright Law which later was enacted in 1996.

So the Library of Congress does not have any authority to implement the Chafee Amendment. What it does have authority to do is implement the Pratt-Smoot Act because that establishes the national library services programs for the blind and physically handicapped I don't want to be very technical but let's be clear about that.

So what's a rulemaking? A rulemaking is a creature of what we call administrative law where an agency that's charged with regulations goes out to the public and says we would like to amend our regulations or we're thinking of amending our regulations or it's been suggested that we should amend our regulations.

And here is the reason that we're coming out to the public. On the one hand this. On the other hand that. We're not allowed to move forward with amending this unless there's a certain public process that's required by law and that's what a rulemaking is.

We do them all the time in the Copyright Office. The Department of Education does them all the time the DOJ does them all the time. It's just part of administrative law. So the

recommendation here is to try to summarize it somewhat succinctly is there's a very important definition that's embedded in the regs of the NLS. And that has to do with who is eligible to receive services.

The NLS as you all know is one of the authorized entities quote-unquote under the Chafee Amendment. It's not the only one. RFND which has changed it's name since our last meeting to Learning Ally and Bookshare also rely on the Chafee Amendment I should say. And the state of affairs today is such that there's some confusion about what the proper definition is. And there's confusion because NLS has a reg that it has to follow that creates a certain definition that it created based on its original programming and mandate from Congress.

The other organizations have interpreted it differently. It being the Chafee Amendment. But the Chafee Amendment includes a reference to the Pratt-Smoot Act so it becomes a bit of a circle.

So to turn the tables around and look at it on the ground, what does that mean? It means people who are trying to provide services and people who are trying to obtain services have some disconnect between what the proper definition is and the question is: Is somebody reading the definition incorrectly. That's a fair question. Is it okay for organizations to be reading them different. And at any rate does the NLS reg have authority beyond the NLS. That's kind of the practical issue the legal issue is is it a number for the NLS to review its reg it's been a long time relying on a particular definition. That's the recommendation.

The other side of that recommendation put forth by other members of the Commission is well on one hand it feels like a regulatory recommendation. On the other hand it's so directly intertwined with the scope of beneficiary class under the statute meaning the Copyright Act mentioning that isn't it really a back doorway of changing the statute or the impact of the statute and therefore if we're going to recommend to Congress that there are some prongs of Chafee that may or may not deserve attention because they are outdated or that's one version or on the other hand they are no longer utilized or may not be needed or may need to be narrowed or may need to be expanded, wherever you sit, if we're going to say look Chafee might need some attention, why is it proper to have a regulatory procedure and a legislative procedure at the same time.

So that's where we are on this. And I would like to stop there. And spend some time on this and invite some discussion.

Now, it might be hard -- and I'm sorry that Jim is not here. But I hope that I've done a fair job of representing his view. Does anybody else have a view on this.

>> STEPHAN SMITH: Maria this is Stephan from AHEAD may I ask you a question.

>> MARIA PALLANTE: Yes.

>> STEPHAN SMITH: So when was the current rule -- is that what it's called.

>> MARIA PALLANTE: Yeah the regulations, right. When was it last --

>> STEPHAN SMITH: When was that regulations decided upon?

>> MARIA PALLANTE: A long time ago. I would have to go back and check that there hadn't been subsequent rule makings. But I think it's safe to say that the eligibility criteria which is what we're looking at which says that the beneficiary must suffer -- let me read it. It says suffer from a quote reading disability suffering from an organic dysfunction and must be diagnosed and certified by a medical doctor. That goes back many decades.

>> STEPHAN SMITH: And then I understand the difference between -- or I think I understand the difference between rulemaking and --

>> MARIA PALLANTE: Statute legislation.

>> STEPHAN SMITH: Or at least I understand as much as I want to.

(Chuckles).

>> STEPHAN SMITH: And so the Chafee Amendment, that's a law piece, right?

>> MARIA PALLANTE: Yes that's the United States Copyright Act. Chafee Amendment is just a section of the Copyright Law.

>> STEPHAN SMITH: So if actions were recommended and I understand there are people on the Task Force feel differently if actions were recommended both in a regulation format and/or a law format, does one happen more quickly than the other or do they happen in the same amount of time? Or what does that look like in reality.

>> MARIA PALLANTE: Boy I can tell you live in Washington. Legislation not quick regulation is not quick. Neither one is

not quick. But it's certainly possible to do both. It's just I think the philosophical question that some folks have put on the table is we're recommending perhaps we haven't gotten to that recommendation yet but Congress really look at Chafee. And if Congress is looking at the statute why look at the reg that's implementing part of the statute until that first statute is resolved. That's kind of the counter point.

But the other side of it is an agency that has administrative law powers and is charged with implementing certain legal provisions has its own authority for a reason. And therefore can exercise a rulemaking when appropriate.

Now also I didn't say this but the rulemaking is not conclusory. We have no power to control the rulemaking as a Commission. What we're saying is Library of Congress, you know, you're in charge of that particular reg. That particular reg potentially affects an awful lot of people there's a lot of confusion. The confusion may have real practical consequences. It may have practical consequences for students for organizations that serve students and frankly for grant money and whether people are comfortable with the way the law is being interpreted. And therefore whether they are comfortable giving grant money. So what do we do about it? And I just want to make that clear that this recommendation is we're saying you should go conduct rulemaking under your power. I think there are people on the Commission that have a really strong sense of how they would like that rulemaking to end.

But I just want to be clear we don't have the power to control that.

>> STEPHAN SMITH: Okay. Thank you.

>> MARIA PALLANTE: You're welcome.

>> PETER GIVLER: Maria, this is Peter. Can you hear this siren in the background.

>> MARIA PALLANTE: Uh-huh, yes.

>> PETER GIVLER: Are you in New York.

>> MARIA PALLANTE: Are you in New York.

>> PETER GIVLER: Yes, I am maybe I better just wait until this is over until I ask my question. I'll put my phone on mute.

>> GEORGE KERSCHER: Maria, this is George.

>> MARIA PALLANTE: Hi, George.

>> GEORGE KERSCHER: So it would be great to import accessible materials from other countries. And we know the SCCR, the whole WIPO copyright thing is going on now. Might it be that the Copyright Law would be touched as a result of some of the things going on in that domain.

>> MARIA PALLANTE: Yes it certainly would depend on what comes out of WIPO but possibly, yes.

>> GEORGE KERSCHER: But if you're talking it would you take a look at that time, the Chafee piece. And do it in one go?

>> MARIA PALLANTE: Yes so that's a good question. Let me answer it a slightly different way. If for whatever reason --

(Background talking.)

>> MARIA PALLANTE: Hello.

>> GEORGE KERSCHER: Linda, can you please mute your phone.

(Background talking.)

>> MARIA PALLANTE: Okay. So if the Copyright Act was to be amended for any reason, whether it's because the United States enters into some binding instrument internationally that requires a change to U.S. law or because this Commission recommends Congress should look at Chafee for other reasons, then inevitably it's going to affect the regs and the regs would have to be looked at and probably updated.

And that's really I think what some other Commission Members were saying is why go into a regulatory rulemaking if we're going to be looking at the statute that is the bigger fish.

But you know I just want to underscore this is just a recommendation that the Library of Congress should consider doing a rulemaking. The Library of Congress could say no. It could say we're going to wait. It's going to say we're not sure we have the power to do that because it's so tied up with the statute. It could do anything and we're not going to be able to control that. That's going to be the lawyers that work in the Library of Congress. And not my office. Not the Copyright Office. Does that help?

>> GEORGE KERSCHER: So was it Jim that made the recommendation to look at the NLS regs.

>> MARIA PALLANTE: Yes and I think you can guess why.

>> GEORGE KERSCHER: Yes.

>> MARIA PALLANTE: It's not a new recommendation. It's been out there for a while. But it's because they are disparate interpretations and wouldn't be it great if all authorized entities were on the same page.

>> GEORGE KERSCHER: Right.

>> STEPHAN SMITH: Maria, this is Stephan again. The -- so under the Recommendation No. 5, the second paragraph, is that -- is that the written kind of summary of the angst on one party's part?

>> MARIA PALLANTE: That's part of it that I have heard informally. That some folks do feel that this Commission wanted charged with taking in scientific or medical analysis. And isn't equipped to do that. And this lends some kind of credibility. When Stephan is referring to are the sentences where some members of the Commission are persuaded that dyslexic is a physical condition. And you know -- dyslexia is a physical condition and I don't know how much disagreement about that there actually is but the way that plays out through the statute has a lot of ramifications for people.

So that's part of it. But I think the other part of it is truly just that we've got -- you know regs usually represent the statute and if the statute is going to be at play, is this really the right time. And I'll just say it again, as I said, though, the other side of that coin, I just want to be completely clear about the two options is that it's a recommendation that the Library of Congress consider doing a rulemaking we can't force them to do it and you could even put in parameters about the kinds of things they should consider when considering it. If that made sense.

>> STEPHAN SMITH: Thank you.

>> MARIA PALLANTE: Peter is your siren gone.

>> PETER GIVLER: Yeah, it is. I hope.

Well, I'm just trying to get my mind around this issue. It seems to me that the -- it's a question of making a decision whether the best way to go at this.

I mean, I think there is probably general agreement on the Commission that the whole -- the question of the beneficiary population needs a second look or it needs a new look. That that question should be raised.

And then the question we're trying to decide is whether the best way to do that is through regulatory -- through the regulatory process. Or the rulemaking process; pardon me. Or whether it's really should be part of a review of that

section of the statute, which makes it I assume Congress's ultimate responsibility, although somebody is going to have to propose language which would probably be the copyright. That is your office, the register's office.

It just -- you know, what are these kind of thorny one of -- one of these thorny, knotty, complicated questions that it's a little hard to get my mind around it. But it just feels right to me. That this -- that this really is a statutory question. Not a regulatory question. And you know if the issue is going to be raised, it should be raised in that context. Not as part of a rulemaking.

>> MARIA PALLANTE: Okay. Thank you.

>> GEORGE KERSCHER: This is George again.

>> MARIA PALLANTE: Hi, George.

>> GEORGE KERSCHER: In the statute they talk about specialized formats and we are trying to drive the world toward I would say Universal Design although that was struck out in several places I guess.

But a common format that can be used by everybody. Or multiple formats that can be used by everybody.

And the statute is deficient in that regard. It needs to be updated. And there's also the conflict between 504 and the population served there. And it just seems more statute than, you know identifying updating the population served so that's my two cents.

>> MARIA PALLANTE: So anyone else?

>> CHAIR DIETRICH: This is Gaier. It's sounding like the real sort of question here is how this is to be raised. The proper legal -- I don't know what the right word is. Legal framework or legal process --

>> MARIA PALLANTE: Context.

>> CHAIR DIETRICH: Context under which to raise it. But what I'm really curious about is if there's any lack of support to actually go in and take a look at this. Whatever the proper context is.

But is there any dissenting voice on the Commission to actually engage in this process of looking at the Chafee Amendment?

>> MARIA PALLANTE: Well, I think unfortunately I think you just inadvertently conflated the statute in the regs if you don't mind if we can table that because we're coming to that in

a later recommendation let me frame it differently which is do people feel -- it sounds like people generally can appreciate that there's a big statutory question here. Does anybody, however, feel that because it's more a statutory question than a regulatory question that it doesn't belong anywhere in the report? Or could it be framed in a way to reflect the discussion that we just had? Meaning that people essentially agree that there's a statutory question here. However, it also affects the regs. And therefore could conceivably be addressed through rulemaking if the Library of Congress was moved to do so. Here are the reasons they might.

Here are the reasons they might not. And then as I said, we really have no authority or control over what they do. How does that sound?

>> MALE SPEAKER: Well Maria I think you're aware of my position on this. This is Bruce Hildebrand. And we really don't think it's up to the agency as we noted to use rulemaking to reinterpret this. So I think we would have to opt for the statutory. I just don't -- I think this is too complex, too far reaching for us to try to one, call for a rule. And one, prejudice the argument. Instead of possibly laying out the point as one of interest but for rulemaking as a standpoint, I just don't see how we get there from here.

>> MARK RICCOBONO:

>> MARIA PALLANTE: Mark.

>> MARK RICCOBONO: Okay. Maria, I would -- I do think that there are a lot of issues in the statute to consider. And I guess I sort of feel like leaving this piece in encourages Congress to not pay as much attention to the issues in this report.

I would prefer to urge Congress as strongly as possible that Congress needs to really take the issues raised in this report seriously.

And spend time on it. And anything that tells Congress well you know you could just leave this up to somebody else, unless it makes a lot of sense, I think might be -- might be watering down the content we're after.

>> MARIA PALLANTE: Okay. And Mark let me ask you a devil's advocate question: What if Congress got really busy and didn't get around to the statutory discussion that you're hoping for.

>> MARK RICCOBONO: Well, I don't know that that -- I don't know that that precludes this from coming up again.

I just think that our roles should be to urge Congress to take action. And I think where it gets taken from there is up to the people that want to keep urging these issues forward.

>> MARIA PALLANTE: So your view is essentially this is always in somebody's back pocket to raise as a suggestion but you really would not like it to be the focus of the report.

>> MARK RICCOBONO: I certainly wouldn't want it to raise more attention from someone than serious considerations that are needed statute.

>> GLINDA HILL: Maria this is Glinda Hill for Alexa Posny I think you know the departments -- how we look at this, too. In the K-12 this is -- that really affects us on implementation. And we're interested in having this be a focus because we're looking at students who transition into higher education. And the transition piece is something that isn't mentioned in the statute, too, in the higher education statute.

And so it is a part of what we should be considering. And also the population here is a population that we have often not spoken of directly. And this is the students with dyslexia and learning disabilities. We give lots of talk to our population of visually impaired students and blind students. But we have not talked a great deal and focused a great deal on our students with learning disabilities. And I really would like to see us not table this completely. I feel as if at this point we don't have everybody in the room who would be able to speak to this issue.

I know Jim is out of the room at this point, too. And he is -- he's the representative who should be technical to this.

>> MARIA PALLANTE: Well and this is --

>> GLINDA HILL: Excuse me. And answered treatment, too, from Learning Ally.

>> MARIA PALLANTE: Yes. I think we have recognized that and we should recognize it again. The folks who run authorized entities in addition to NLS that interpret the population perhaps differently in good faith are always a little bit at sea because they are not quite sure what the proper legal authority is.

>> GLINDA HILL: Yes.

>> MARIA PALLANTE: So Glinda could you for the group, though, just please in a couple of minutes explain what you mean by the K-12 to higher ed transition and why this is such a point of confusion in that context.

>> MALE SPEAKER: Linda may I ask a question of you. I listened very carefully. Are you saying you were for a statute or for a reg. I'm sorry, you were too subtle for me.

>> MARIA PALLANTE: Glinda would like to -- actually let me have Glinda answer the question I asked her what she's essentially saying is she would not like to say this tabled completely because if that's other authorized entities not NLS and obviously it affects some of the grant money and some of the services. So go ahead.

>> GLINDA HILL: Yes. What this affects here is we have students that at this time when they are transitioning, I have heard at each of the meetings how one of the statements I think and we see it in some of the report language or some of the draft report language we have students who are not prepared. That they are not receiving services in K-12. And I have to say I think one of the barriers in K-12 is this -- as a result of this confusion with the language and the who is really eligible under copyright. And under IDEA. Also under 504. And who has access to what materials. And if they are able to gain access.

And so in order to make successful transitions and to be ready to attend college, they need to be students who have severe dyslexia and severe learning disabilities need to have access to these materials. And I don't think -- well I can tell you, we are not even touching and scraping the surface of this 1 or 2% of the students. And I don't have my numbers with me I wish I had brought them upstairs I'm not at my desk I'm in a room with a conference line but if I had my numbers with me I would share those with you but we are not scratching the surface with our few funded projects of the number of students that we could estimate would possibly fall into this category and we are not even talking about large numbers.

>> MARIA PALLANTE: Are you talking about K-12 still.

>> GLINDA HILL: Yes, I am.

>> WOMAN SPEAKER: I can help you as far as the dyslexia and learning disability go we're talking about 10% I can help you with the numbers.

>> GLINDA HILL: Excuse me Linda I'm not talking about the 10% you're talking about I'm talking about students with really significant reading disabilities.

>> LINDA TESSLER: Yes.

>> GLINDA HILL: And I'm talking about this 1 to 2% of the population. I'm not talking about the 10% you're talking about.

>> LINDA TESSLER: Okay.

>> GLINDA HILL: Thank you, though, I appreciate your help.

>> SKIP STAHL: Maria, this is Skip, I just wanted to three in one other K-12 reference.

Because of the lack of clarity on interpretation, there's been a couple of circumstances where states attorneys have informed their local education agencies that if those local education agencies choose to use resources made available via Federal funds or grant making like Bookshare or Learning Ally that the State's Attorney perception is that those organizations are acting extra legally because the interpretation is different than that promulgation by the national library service so they will not support the local education agency in accessing those services if there's a concern.

>> MARIA PALLANTE: Just to carry that through a little bit further what you're essentially saying is if there were a rulemaking and the Library of Congress were to say and we have no idea what they would do but if they were to say you know what we do think our definition is outdated and we're going to change it we don't know if they would say that they may say they don't have the expertise to make that decision but if they did change it and it were closer not identical to what Bookshare and RFND were doing you think that would get rid of a lot of the stress on the ground is that fair.

>> Yes.

>> MARIA PALLANTE: And Glinda's point is that the stress is disproportionate to the small percentage of people that would be served. It's not necessary.

Who else?

>> GEORGE KERSCHER: This is George. It seems like the reg path could be pretty fast. Could be faster than the statute. And following statute would have to be regulatory items anyway.

Could our report recommend short-term and going through the regs and fixing this one problem we know -- we believe it could fix. And then on a larger scale be a statute.

>> MARIA PALLANTE: Yeah I don't think you should look at any of these recommendations as either/or and also since we don't have control over any of them or few of them you don't know which ones would stick.

But you could do it that way. Or you could do it in terms of the way the discussion has actually just flowed which is to say you know this would be towards the end. The statutory focus would be primary in the report. With lots of different perspectives. And at the same time recognizing that some of the

statute has to be implemented by various agencies. And this particular one, the Library of Congress, that this is another route that could also be fixed but should not be viewed as instead of a statutory focus.

>> GLINDA HILL: Maria, this is Glinda, too, if you recall, too, it would require a rulemaking change for us, as well, because our rulemaking our rules reference yours as well I hope you don't mind interrupting -- me interrupting now but I do hope we don't table this today and make a decision without the whole Commission present.

>> MARIA PALLANTE: Well I don't think we're tabling anything permanently if we do table anything today because we are all going to read the report once it's pulled together but I think we do have to kind of begin to prioritize some of these recommendations. And I think Dave and Skip and Gaier jump in if you want but what I'm hearing people are not opposed to this and just remember I did narrow it a little bit by -- when I first introduced it by saying the library cannot do a rulemaking on the interpretation of the Chafee Amendment it can only an interpretation on the amendment of the Pratt-Smoot Act which is its authorizing statute but knowing that that Pratt-Smoot Act is also referred to in the Chafee Amendment I mean it's just something that we all are aware of.

So it would be narrow. But what I'm hearing is people are mostly concerned that going down a regulatory road could somehow deflect any focus on the statute which it seems like an awful lot of people would like and we're back to I think the same question. Is there a way to write this. And I'm going to try to represent Jim on this since this was his recommendation. Is there a way to write it that takes into account the discussion that we just had. And therefore if the Library of Congress were reading it they would get the full sense of maybe we should wait on this maybe this is something we put on our own internal checklist and check maybe this is something we approach DOE on in the K-12 but not higher ed so the real question is do you want to take it out all together and I hate to beat the horse on this but I think that's the question.

I think Bruce was very clear take it out all together. Mark I believe you said the same thing.

>> MALE SPEAKER: I don't know that I would take it out but I was going to ask a question that is there a reason in this that the regulation piece comes before the other piece? I guess I always think that regulation has more -- the other one is more important.

>> MARIA PALLANTE: No it's not written in any particular way.

>> MALE SPEAKER: So that may be one element of it.

>> MARIA PALLANTE: Yes. Any other last words on this.

>> DAVE BERTHIAUME: This is Dave Berthiaume just another reminder for members to please mute their phones when they are not speaking so we can cut out the background noise. Thank you.

>> MARIA PALLANTE: What I would suggest then in the interest of moving on is I'm going to bracket some language reflecting the discussion. And maybe what all of you could do is to the extent you have additional comments on this now or you want to think about it, accepted me an -- send me an e-mail. Feel free to copy your colleagues. And we will just table this with a small t in terms of not quite knowing where or how it might appear in the report, if at all.

So let's just move on if that's okay. Is that okay with everyone?

Okay. Recommendation 6 this is not something for which there was contrast at all in the legal -- controversy at all in the legal group it became clear that people were very troubled by experiences where certification had proved to be complicated and expensive and particularly aggravating in situations where a particular disability was not likely to improve and therefore shouldn't require repeated certification.

And you can tell by the way we have worded this recommendation by giving -- kind of giving shoutout to both the Department of Education and the Department of Justice that we're not quite sure how the rulemaking authority would work on this. But the message is to those two agencies: Could you please take a look at the requirement for repetitive certifications. And see if they are justified. Because for a lot of folks they are a hardship.

Any questions on that one?

>> CHAIR DIETRICH: Maria this is Gaier. I don't have really a question. I just would encourage Skip in CAST when they are actually formally writing all of this up, I think there needs to be some more language of clarification in here about exactly what happens with this and when it happens. Because I know that there's recertification that happens in the K-12 which is really not -- I'm not even sure that version is the right way of saying that.

It's a review of where the person is so that better accommodations can be provided. So that's kind of one issue.

And then when that transition happens between the K-12 space and the higher ed space, then the campuses are kind of left a little bit to their own decision making about how exactly they are going to handle that and what -- I don't know about individual campuses but the systems are left to decisions but how they are going to handle that in the California community colleges we actually do testing and we do that for free but I don't know if that's widespread so that's quite a few one issue but then the other really big issue is that when you go into the hey stakes testing even if you have a student who has been served all through K-12 and who has also qualified for services in higher ed that's when it really becomes a barrier because that's when really expensive tests are required of the individual often in order to prove that they are eligible for having extended time in these sorts of accommodations.

So again I'm not saying take it out. I'm just saying I think we need to have some clarity some additional clarity around it.

>> MARIA PALLANTE: That's very helpful Gaier.

>> Glinda: This is Glinda I'm not sure, too. I think there needs to be clarification here, as well. Under K-12 we no longer require to have this every three years recertification of the disability. We have -- that's something that we took -- that was changed in the 2004 amendments. I think that may be something that we'll look at and depending on the disability that was changed. I think what Gaier is referring to is that there are assessments to see the level of progress and ability. And that may be what she's doing in her offices, as well.

Gaier, I think maybe -- and I may be wrong. But for students to be even receiving services through your DSS offices they have to have a known disability. I had two sons who received services. And in order for them to receive services, I took them to vocational rehabilitation services, where they were given batteries of testing. And that's how they were determined that they needed services.

>> MALE SPEAKER: I'm sorry; you are correct Linda that they do have to have a known disability. However they do not have to have been served in K-12 and we actually have a lot of people in our colleges who do this they can be identified later but yes they do have to have proof.

>> Glinda: And this is I think what this recommendation is referencing. That if students don't have access or if their incomes are such that the parents are paying for these really

high and costly services, testing services, once they have the diagnosis why are they being asked to -- why are they being asked to have them tested over and over again just to say they have learning disabilities.

>> MARIA PALLANTE: That captures the discussion of the -- Gaier's point is well taken let me make a recommendation here. I'm looking at this again. Why don't we -- it might be the case that a rulemaking is too strong. So what we could do is say the Department of Ed and Department of Justice should review and clarify and if necessary conduct a notice of inquiry publicly or a rulemaking. Because we could go into all of the great detail about exactly what's wrong or we could just simply say you guys are charged with this we're hearing there's some confusion and could you clarify that please I would lean towards that what do people think.

>> CHAIR DIETRICH: The one thing I would add is it's not so much an issue with all of the colleges but it is almost always an issue with the high stakes testing. And I don't know. I don't know, Glinda, does the Department of Ed actually have any authority over that?

>> MARIA PALLANTE: Well, again, it's up to them to do what they have authority to do. Right? I mean they can only do what they are allowed to do so our recommendation is to the extent you're allowed, could you look at this. And I don't know if we need to put in testing specifically. But we certainly can. It just says prove eligibility for accommodations. It doesn't say for what. But I think some of what you are both raising could be worked out in the wordsmithing.

>> GLINDA: I think so, too. I think that's a good recommendation, Maria.

>> MARIA PALLANTE: Does anybody not want this in here at all? Anybody. Okay. Good.

All right. Recommendation 7 moving into possible legislative recommendations.

This recommendation is about a possible standards board. This may well be a recommendation that bleeds into the other Task Forces.

And that's fine. And could even be improved upon by whatever is coming out of those Task Forces. The but to lay it out, in terms of the market and what is being offered, would it be helpful if Congress were to facilitate the adoption of specific voluntary performance criteria and technical standards possibly developed by a standards board comprised of all of the key members of the ecosystem, including the publishers, and

provide a target date by which to revisit the state of the postsecondary landscape.

So this is if -- the way to sum this up is if everybody could have some central idea about the expectation of standards for accessibility, wouldn't that kind of prevent content providers and universities from going down the road of producing and buying things that aren't accessible in the first place.

And I'll just stop there and open it up for discussion.

>> MARK RICCOBONO: Maria, this is Mark. I -- in the statement here, it sits -- it's not -- it doesn't sit right with me to say everybody in the ecosystem and then call up the publishers. We should either list the relevant folks that we want or I mean this is partly based on the document we provided, which said specifically publishers, digital technology folks, academia and the disability community. And I think it sends a message if you cut everybody out and only list one group.

>> MARIA PALLANTE: Yeah that's a good point. Really good point.

>> MARK RICCOBONO: So have it one way or the other.

>> MARIA PALLANTE: Yeah and that's a fair point, Mark I mean you could --

>> MARK RICCOBONO: You can leave it or specify it. We can say key members of the ecosystem just heard And down at the bottom we can list inclusively, including but not limited to perhaps or including specifically and that would be --

>> MARIA PALLANTE: Who are they? Publishers -- Mark, give them to me again, disability community.

>> MARK RICCOBONO: Well, besides publishers to George's point from earlier the digital technology industries I think is what we said in our document. And we specifically mentioned the postsecondary institutions.

There may be other groups that folks think should specifically mentioned that in our report.

>> WOMAN SPEAKER: I would suggest the AT industry as well since they are separate from the digital industry they have their own professional or whatever you call it industry group.

>> MARK RICCOBONO: It is done.

>> MARIA PALLANTE: And the United States Access Board is referenced here. That's not -- that's a good suggestion that

people seem to be happy about. It doesn't have to be them. But it seems to make sense.

Okay.

>> GEORGE KERSCHER: This is George. One of the -- so we're going to see with the 508 refresh a harmonization of 508 with the W3C and WAI guidelines. And I know that within the International Digital Publishing Forum we're going to be working on guide documents for accessibility. And I don't know that we're going to draw a bright line anywhere which this committee may.

But I would, you know, encourage that this would always work in harmony with existing standards organizations.

>> MARIA PALLANTE: Okay.

>> GEORGE KERSCHER: We don't want to get the UK doing their stuff and U.S. doing ours.

>> MARIA PALLANTE: Existing global standards is what you're saying.

>> GEORGE KERSCHER: Yeah we're looking for a worldwide market here.

>> GLINDA HILL: Maria this is Glinda I would also include on this university -- well IHE professors, faculty, whatever. But I think you need to engage on this panel the faculties themselves.

>> LIZANNE DeSTEFANO: Yeah this is Lizanne, I would concur.

>> GLINDA HILL: Thank you.

>> MARIA PALLANTE: Thank you, guys. Should we move on. Oh, yeah, Peter.

>> PETER GIVLER: This is Peter. A couple of questions. In the wording of the recommendation itself, that second sentence is it ensure or facilitate.

>> MARIA PALLANTE: I think it's facilitate. There's a number of cut and pastes red line typos in this if you're actually reading it.

>> PETER GIVLER: Okay. Then the my other question --

>> MARIA PALLANTE: Do you have a preference? I think it's facilitate.

>> PETER GIVLER: I think facilitate makes more sense to me. I assumed that's what it was but I just wanted to clarify that.

My other question is the target date that's included at the bottom of this. And a target date by which to revisit the state of the postsecondary landscape and decide what.

>> MARIA PALLANTE: Yeah I was looking at that myself I think again this is something that might have been -- might be a tail left over from a former draft.

I think the idea was that this is something that could work in good faith voluntarily to facilitate the market but to the extent it didn't work, you know, we're back in a later recommendation which I'll come to.

>> PETER GIVLER: That's what I was going to say it seems to me that we may already have this point covered.

>> MARIA PALLANTE: We do I think we could probably delete this last phrase and it still works.

>> PETER GIVLER: That would be better.

>> MARIA PALLANTE: Okay. Shall we move on. How are we doing on time? Can I keep going.

>> CHAIR DIETRICH: Yes, please.

>> DAVE BERTHIAUME: Yes, Maria, please continue.

>> MARIA PALLANTE: All right. Recommendation 8.

This recommendation came from one of our Task Force members, Mark Riccobono primarily. It's been extensively discussed.

All of us on the Task Force have had discussions with other members of the full Commission as well as members of the private sector including NFB Council for example Dan Goldstein and some of the AAP members because this one is probably the one -- well I know it is the one that has the most disagreement and maybe the most emotion on both sides so let's spend some time on this.

So this recommendation would create essentially what's called a private right of action by students to sue publishers - - now keeping in mind students can already sue their universities under the ADA for failure to provide reasonable accommodations. This would create the kind of right of action vis-a-vis those who actually produce the content. And would have to be fleshed out for example to the extent something was not accessible could the student turn around and sue for damages, for specific performance meaning they would have to create something accessible if they hadn't already.

And I'll set it up and then we should spend some time talking about it.

And I -- because there's such strong disagreement, I do have a proposal. Because I would like to try to find a place on this one where we can get to some way of including it. But without suggesting that any one player on our Commission or in the ecosystem is acting in bad faith right now. And I don't think that was the intention. But I am aware that some people have perceived it that way. And I can see how it would be perceived that way.

So the Commission Members some Commission Members believe that the market approach under kind of a voluntary good faith system including something like a central standards board will only ever go so far unless there's some kind of -- because that's really a carrot system let's keep providing incentives and work together and try to get to the right place because ultimately in a market model publishers and authors want to sell what they are creating and universities and the students want to purchase what they need.

And so it's in everybody's interests therefore to create what people need to buy. And people will buy that which is created properly.

So the question is if for some reason that doesn't work and there's skepticism about the degree to which it could work or the timing or the timeframe under which it could work, what's the stick to make it happen. And that's where why the proposed right of private action.

One concern -- and none of us are experts on this committee. But one concern that has been raised is a First Amendment legal argument, which essentially is a response that says if you're telling publishers how to publish you're telling them what to publish and therefore you're regulating speech. That is a constitutional issue. You can't get at this problem that way. You can't demand that people publish what you want. You can only try to get them to do that. And that's a concern that I think we are in no position to agree or disagree with. It's going to have to be represented to the degree this stays in the report.

I will say that those who have put this forward feel very, very strongly that there is not going to be a vibrant market unless there is some kind of stick end that -- and that some kind of burden be placed on someone other than the universities so the students as I understand it can sue the universities that's not really the best thing to do if you're

trying to go to school there, it's not a great way to start your academic career.

And therefore, it doesn't always happen when it should. If students would do that more, for example, maybe universities would push back more about what their faculty are asking people to buy therefore publishers would be under more pressure therefore the market would kick in so because you have kind of a vulnerable link in that chain starting with the student it's not really going to work the way it could.

So I'll stop talking. And let's invite some conversation on this one.

>> CHAIR DIETRICH: I do think Maria that we do have to keep in mind that there is the stick that the campuses are required especially after the kindle letter made this very clear from the joint letter from DOJ and DOE that it really -- the campuses cannot purchase and require the use of materials -- of hardware specifically that's not fully accessible to everyone.

So there is -- and that kind of doesn't exactly address what you're saying but I think we also need to remember that stick is there.

>> MARIA PALLANTE: Very good point that is either the Department of Ed sending out a civil rights letter or it's an Attorney General coming in on behalf of the state saying you need to do this and not that. I guess I didn't add that to the mix. Thanks for pointing that out. It's not just the student that can sue the university now. The Attorney General can do that. And there it's not a question of fear or vulnerability. It's a question of resources and time. And I suppose -- and Mark, you should jump in. That the feeling of at least the NFB that neither is happening enough. Not the Attorney General level and not the students.

>> MARK RICCOBONO: I would say our view certainly is that there are some stronger mechanisms required. There are already existing obligations under the law as has been pointed out but that hasn't stopped postsecondary institutions from adopting these technologies or from implementing inaccessible Web sites. And the government agencies that have some degree of oversight can do the same thing. So I think that is an important piece to consider whether we think that the system is actually working and protecting the equal opportunities for students with disabilities.

I would say the way No. 8 is categorized makes it sound like the point of the statute or a change in the statute is solely to get the private right of action. And I think that

might be a more charged way of putting it forward, whereas 7 takes a significant piece of that and just sort of says Congress should look at it. Maybe there's not a better way to do it. But it might be that -- I'm certainly for the private right of action. I'm clear about that. But I think it might be presented here in a way that revs up the political charge. But I understand that the point here is to address the question of whether a stronger stick is needed.

>> MARIA PALLANTE: Yes and well it came from you so don't let us rewrite it if we screwed it up but in other words the stick can publishers be compelled is really where you were coming from. And let me throw in what I've been thinking about.

To me, this falls into another recommendation that we have which is No. 12. Yes. 12. So if you just bear with me let me read that 12 says in the event the market does not work including collective licensing including everything else we're talking about then Congress shall not pull any punches Congress should look at anything and everything it can to make sure accessibility happens.

And that would include for example optout licensing or compulsory licensing and my question for you guys is: Could we put this one into that bucket.

>> PETER GIVLER: Maria, this is Peter. That's sort of what I was thinking, too. I mean just logically it seems to me that the overall position that the Commission is taking is, first of all, we all want the market to work. We all want the people with disabilities to be able to purchase materials just like anyone else. And technology is moving in that direction. Bruce was just talking about, you know, this new textbooks being unveiled by SynGage they are going to show them how the accessibility features work and so on. I think if it doesn't -- it just, again, sort of feels more right to me to roll the questions when you're creating a private right of action, that is one of the possible remedies that Congress could take a look at in the event of market failure but first of all we want the market to work.

So I think that dealing with it sort of in the event of market failure under Recommendation 12 makes a lot of sense to me.

>> MARIA PALLANTE: Let me follow up on that and just ask everyone because I think this is an important point.

Do we think the market would work if it were regulated from the top down? Or by statute? In other words, if this were to happen, and I think it's a very difficult question. And I

think there would be hearings that went into constitutional law however it's a big statement from the Commission, as well.

This is so important to us that we wouldn't rule out telling publishers how to publish stuff for universities. But if that were the case, if that were the law of the land, what would that do to publishers? What would it do to the market we're trying to compel in the first place? And it's really an economics question I'm certainly no economics major but have people thought about it that way.

>> GLINDA HILL: Maria, this is Glinda. This talk about market and market failure, I am no economist, either. But sitting in on all of the meetings and I've tried to listen in or participate on most of the Task Forces. And I am at a loss as to how do you all define market failure?

I just don't understand what -- how do we know when we have market failure? And also, in terms of the standards, we've had standards for, oh, ten years, over ten years. And we're talking -- we're still talking standards, too.

I'm just at a loss as to when do we determine that there is a market failure.

>> MARIA PALLANTE: I perceive the question -- I'll answer it very briefly because I would like to -- the Commission Members to answer the question I just asked but in terms of the Copyright Act and something like the compulsory license which is something that replaces the market. Right? We have that for example for satellite transmissions because there's no way you can clear that effectively or cost effectively. Congress would step in and examine the market. And so would DOJ. Everybody who has got regulatory authority to do that would look at it. Congress does pass compulsories from time to time. They first have to decide if there's market failure so I don't want to dodge the question but it's really not a discussion that we would be having. It would be having at a very high level. And I think here we're really dealing more with a philosophical question.

At what point -- you know let's just assume for the sake of argument that everyone on this call agrees that at some point a private right of action might be the only thing that could work if we had it tomorrow does that kill the market? I mean I think we need to talk about that.

>> MARK RICCOBONO: Maria this is Mark. I just want to interject that I think market failure is used and has been used in the Commission so often to speak specifically to publishers. But I urge folks to remember that what we're talking about is

much, much more broader and much pervasive -- more pervasive than that. We're talking about a whole suite of technology systems and platforms. I don't think many people would consider Google to be a publisher.

But the fact that Google is able to go into universities and get them to adopt dozen of applications which have accessibility problems I think is a significant part of the ecosystem we're talking about.

>> MARIA PALLANTE: That's a really good point, Mark.

>> MARK RICCOBONO: In considering your question I don't want people to just consider the publishers because I think that's an important intent of what we're talking about.

>> CHAIR DIETRICH: Excuse me this is Gaier I have to step in with my chair hat for a minute here. I don't want to derail the discussion. But we do need to take a quick five-minute break and once we come back to resume the discussion. So if we could just take a quick five-minute break and come back at what would that be 12:41? Or that's 12:41 for me. 3:41 for you all. And then Maria will resume the discussion.

>> MALE SPEAKER: 3:42 or 3:43.

>> CHAIR DIETRICH: 3:41 that's five minutes away.

(Break.)

>> CHAIR DIETRICH: Are we back.

>> MARIA PALLANTE: I'm here.

>> CHAIR DIETRICH: Okay. Good, Maria.

>> MALE SPEAKER: That's what matters.

>> WOMAN SPEAKER: Thank you, Maria.

>> CHAIR DIETRICH: All right. So Maria, I think James Wendorf is supposed to get back online around 4:00 o'clock so we might just check --

>> MARIA PALLANTE: Speed it up.

>> CHAIR DIETRICH: Check at that time where he is but I would just have you continue at least until then so we're in the middle Recommendation 8 and what's on the table so far is Mark who was the primary author of this particular provision has graciously said you know maybe we don't need to use the phrase private right of action maybe what we mean to convey with this is that at some point we have to recognize that it's possible that all of the good faith voluntary collaborative efforts may not work. And if that's the case we wouldn't want us to just throw up our hands we would want Congress to consider something

pretty strong and maybe drastic which is considering whether there are statutory provisions that they could enact that would compel the production of accessible formats. And we're now discussing -- we talked about the First Amendment issues and now we're trying to kind of work through whether something like this would in fact help or would it hurt the market?

Are folks happy with the way it's generally written.

And I propose that my own feeling is that we probably should keep it because even though there is polar disagreement to it, it is a strong statement to the Commission about how important we perceive accessibility to be. And how seriously we took our mandate. However I would propose in my view that it belongs under Recommendation 12. That Congress look at all of this stuff but don't be fooled if nothing works we would not want you to hold back and we would want you to consider all tools in your arsenal including perhaps something like this. And my question to you, Mark, is: Would you be okay with that. And my appeal to the publishers is notwithstanding your strong disagreement and the fact that that would be documented. Would it -- could we meet you halfway by perhaps folding this into that kind of recommendation.

That's represented in 12. And I didn't mean to cut off discussion I just wanted to summarize where I think we are.

>> MALE SPEAKER: Is Bruce back.

>> BRUCE HILDEBRAND: Yeah, I was listening very carefully here. Tell me again, what -- okay. --

>> MARIA PALLANTE: Yes you want this out. That's been cleared.

>> BRUCE HILDEBRAND: But we're talking about striking 8 and going to 12.

>> MARIA PALLANTE: Not striking 8 but moving 8.

>> BRUCE HILDEBRAND: How do you move 8 to 12 I'm sorry I'm missing something here.

>> MARIA PALLANTE: Well I'm starting -- I'm trying to bridge -- this is the most polarized recommendation that we have. I appreciate the sentiment that is expressed here. Which is that this is so important that we need Congress to be vigilant and we need them to recognize that at some point if nothing else is working they should not fail to exercise even drastic measures.

So whether that's compulsory license or whether that's a private right of action all things should be on the table.

You want this out all together you the publishers not you personally and my appeal to you and my question for Mark is there a question for us to keep it but to fold it into the context that's represented in recommendation 12 being that it is really a measure of second resort if not last resort.

>> BRUCE HILDEBRAND: I can go along with 12. There's another comment I want to make, though, that was made by Mark at the break. And that is, okay. It's been established that, you know, we've got ADA, 508. And the point -- the comment made was well what about Google.

The thrust obviously that we're looking for is if there is no demand, there will be no supply. And there is as Glinda noted -- there are standards and regulations but they are not being adhered to by the Government and some schools.

So we have regulations on the book that it's been noted are not being complied with.

So let's expand the people that can be litigated against ranging from a self publishing individual who has a single piece of work to include people who do not even publish for the postsecondary market. But because of some faculty member has gone out and drawn that into a classroom, the example I've used before is a brochure put out by a small town to promote some event or something to Google Adobe, IBM -- I mean so we're talking -- newspapers, magazines. The range of litigation that would be incurred from this and the impact -- not effect but impact it would have on anybody who produces any element which is the argument. Well, every single element that goes into the system and everything that is currently protected I should point out and emphasized because we have litigated over this already or been head to head in the legislatures over, the First Amendment, I don't even know when we got through with this if we actually pursued it.

We -- if we would have any credibility left. Because this is monumental. I mean, so I don't know you want to go there. I think 12 has got some viability. 12 has got some viability. But if you actually try to combine them, the question you have, though, is -- and I think it's fair, Glinda, how do we declare a market failure? Because everybody can go to any element that does not meet their specific need in the specific timeframe that they want it and somehow make the appeal that the market has failed. That's like you know you get a broken bolt -- or you get a flat tire so the car has failed. Let's regulate the car. And -- in its entirety.

This ground is so huge, so dangerous and so litigious. The fight I've been in for six consecutive years is the argument that textbooks cost too much. And as I pointed out in the market model paper, the cost to ensure established legal reserves and liability reserves and to litigate something like this across the entire spectrum is beyond -- it's incalculable.

>> MARIA PALLANTE: I don't want to --

>> BRUCE HILDEBRAND: That's enough but you see where I'm coming from.

>> MARIA PALLANTE: I do. And let me just -- and thank you for that.

I fully -- let me just rephrase. I fully understand as the chair of the Legal Task Force that this is a controversial recommendation that has polar opposite viewpoints. There are those that would like it taken out of the report all together.

Unless those who put it on the table in the first place are willing to withdraw it, I think we're stuck in a box.

So if we are stuck in a box, is there a way to move us forward or up to higher principles to put this in the context of a broader discussion about last resort efforts or strong reminders to Congress. And so let me come back to Mark.

Mark, you've put this on the table. How important is this to you that it remain in here?

>> MARK RICCOBONO: Well, I think getting hung up on the private right of action is a little bit missing what's important here. I don't know that I'm willing to get rid of it.

But what I would say is I think the fact that we have standards now. We have laws now. And as is witnessed in all of the public testimony, students with disabilities still do not have equal access to the instructional environment. And that is our charge to Congress.

And I think the question -- I mean we can debate about whether there is a market failure and who is responsible. But I haven't heard anybody universally jump up and say: The market is doing a great job of this. And I think it's our obligation to say to Congress: You need to take a strong look at what is happening. And how it's happening.

And so I think leaving it in says they need to make a strong statement.

Now, will it be the ultimate outcome? I don't know. But I mean you have all heard in the public testimony. I hear

from students every day that are fighting these battles. I don't know all of the answers. But I don't think there's a clear task that the market is taking to solve it. And I don't think in a lot of cases the Government has figured out how to watch over everybody. So that it does happen. So I think it's up to this Commission to say somebody has to say that students with disabilities do have this right, they do deserve this right and we all need to do a better job of figuring out how to get there. So I think we're getting off a little bit in the weeds when we start speculating about what it might do.

There's already obligations here. And I think we need to figure out how to continue to have that dialogue.

Now, if this element is the killer in that dialogue, which I don't think it is then I would be willing to consider withdrawing it.

But I don't think we should get hung up on the private right of action. But I think it needs to be there so that we know that this is important.

>> MARIA PALLANTE: Could we try to -- let me just rephrase a little bit. So you're clearly right that the market is not serving everyone who needs to be served right now. I don't think anyone here would dispute that.

This, though, is really about the future market, as well. And the question is -- and this is my view, is digital publishing in its infancy or is it in failure. I happen to think it's in its infancy. And the way I would think we might be able to move this issue forward is to say to the extent the market does not develop the way we all want it to, what should Congress -- what should Congress do? And should it do drastic things and I think this is a bit of a drastic thing because you're creating a new means of redress against people who produce content. Content being protected by the First Amendment which is the sounding principle of our democracy so these are not small legal issues.

Would you be okay with -- would both of you be okay and anyone else who has a viewpoint on this in removing this into a broader context in the context that I propose -- and the context that I propose is the if all else fails context which is represented in Recommendation 12. Is that a way forward?

The only thing I can think of at the moment. I'm not pushing only that if anybody else has a different idea, please jump in

Otherwise it's going to stay the way it is, which is a recommendation for which there was very strong disagreement.

>> CHAIR DIETRICH: This is Gaier, I want to sort of come back around to something that Mark said about the whole Google issue and just the fact that I really feel very uncomfortable singling out the publishers in this area. Because it's not just the publishers, the publishers themselves could make a completely accessible format but it could be that the course ware management system can't deliver it or the digital machine that you're using to read it on can't handle the functionality.

So -- and I don't really know exactly how to handle that. It's just that I'm getting this visceral feeling of it's not all of the publishers fault there are other players in this, as well and I'm wondering if there might be a way of rewording this such that it could be pointed out to Congress that currently you have situations like you know the people who testified who they end up essentially having their entire schooling derailed because of some of these issues and noting that there is currently no private right of action and maybe kind of coming around it from that direction of you know this is possibly something that needs to be looked at. And maybe without saying it so much that it has to be against the publishers but just you know noting that if there's no other way of handling this situation that maybe that's something that needs to be considered.

>> MARIA PALLANTE: What we could do is simply say -- and Mark we're working backwards from your language now more or less but Congress should consider in the event of market failure which is the way 12 reads, Congress should consider new statutory provisions that would compel the production and distribution of accessible formats. And devices. And whatever else we need to put in there.

And it's reduced to just a couple of sentences.

>> MALE SPEAKER: Let's think about that for just a minute before you do that because we may need to extend it instead of shorten it. I think what Gaier just said got to the real bottom line of the issue. And that I was -- she hit it all when she points -- when she points out you can make something accessible it doesn't mean the computer, the software the student has this is one of the arguments we keep pointing out is that JAWS is very expensive. There's now what's called NTSD or VD --

>> CHAIR DIETRICH: NVDA.

>> BRUCE HILDEBRAND: Yeah, whatever, thank you. That's out there that's free that's sort of moving into that space. But if you've got a student with JAWS 2 and we produce a totally accessible product or somebody does that's in JAWS 5, then you know what are we supposed to do about it? There are too many

moving parts in this. And any time you isolate any one of those moving parts, it's --

>> MARIA PALLANTE: So in my rewrite I just included devices and production of devices as well as the content so here are the options on the table take it out all together I didn't hear that the person who put it on the table was happy with that. Rerword it. And move it.

Or leave it the way it is representing that there's no agreement on this.

>> MARK RICCOBONO: Am I muted.

>> MARIA PALLANTE: No you're not.

>> BRUCE HILDEBRAND: No.

>> MARK RICCOBONO: So is there any linkage between this and the access committee?

>> MARIA PALLANTE: On the standards board.

>> MARK RICCOBONO: Yeah.

>> CHAIR DIETRICH: Sure.

>> MARK RICCOBONO: Because if the standards board is looking at the tools and technologies that -- you know, they are on top of this stuff, they are going to make their recommendations based on current technology and not 15-year-old screenreaders. And they have the ability to make recommendations and set some bars.

But my concern is that there are companies that come out and totally disregard, totally disregard anything to do with accessibility.

>> MARIA PALLANTE: Right.

>> MARK RICCOBONO: And bring out products in higher ed. And that I feel is wrong. If those tools that are coming out products that are coming out and being developed conform to what the Access Board has established, then we're cool. We're not trying to stop innovation here, either. So it seems to me that if you have a deaf-blind student, it's going to be very difficult to make things accessible to that student. We're not using that all word.

But if they can get over the bar the Access Board sets, then we're cool. If they flagrantly disregard it, then I think that's when this private right of action may take place.

>> BRUCE HILDEBRAND: Well, you got the one thing -- did you say compel in there, Maria? because if we go to compel,

we'll be arguing the First Amendment until some time in the next --

>> MARIA PALLANTE: Bruce we're already arguing the First Amendment and right now the recommendation says private right of action so I was working backwards from that I think George just moved us away from 12 back to 7 and we have yet another option on the table. Mark I'm going to go back to you.

>> MARK RICCOBONO: And actually where George took us back to kind of where I started but 7 and 8 at least the way I originally proposed it was very much linked. 8 being sort of a piece we recommended. But it was a piece of a broader professional. And I guess when I spoke the first time I was trying to sort out whether I thought you could really separate them all out. And by separating it out, it sort of ramps up the emotion around it.

So I would prefer that it would be linked as a remedy to 7. As another tool that students -- as another safeguard that students with disabilities have.

I think we don't see students suing universities very much. But we know that students have significant access barriers.

So I'm not sure that tool works very well.

>> CHAIR DIETRICH: I just have to -- as one of those universities to say we actually have a lot of complaints that come through. I mean it may not be something that hits everybody else's radar but trust me it hits ours all the time.

>> MARIA PALLANTE: So Mark does it mean that -- what does it do to 7, though, if you now -- if 7 goes from being the creation of a kind of good faith Board that everybody may be in fact excited about suddenly has got kind of an anchor around it, right? That and by the way if you don't comply and don't play well, there's going to be statutory remedies. I'm just -- I'm trying to figure out how the structure would work.

>> PETER GIVLER: Maria this is Peter. If I understood where George was going with that in pointing out the linkage with 7, well, I shouldn't interpret. George, are you saying that compliance with the standards and all of that sort of stuff, the things that are going to be established in recommendation 7 or through recommendation 7, that if you complied with that, that that would create a safe harbor for litigation purposes.

>> GEORGE KERSCHER: Um, I'm not a lawyer. But in my mind, if a product is conforming to the recommendations that are

established by this body and somebody comes along and says: Well, it's not working for me and I'm going to sue you, that that would be a pretty high barrier to get over in that case.

>> MARIA PALLANTE: So we have a Recommendation 11 that basically says Congress should create incentives by offering things like tax incentives or safe harbors or presumptions under the ADA and that one is linked to standards. But that's because you already have a right of action. Under the ADA. If you -- you can't link the 8 to 7 and create a safe harbor because there's no statute yet.

>> CHAIR DIETRICH: I do want to point out the time.

>> MALE SPEAKER: I can say we endorse the 7 of the idea of let's get some standards out here so everybody knows what the threshold is. I think that would lead to the kind of greater enforcement that Mark is looking for. If we can agree on what we're looking for. We can't define accessible. We can't define universal. We can't define technologies that are in the public marketplace. We're learning about proprietary not just by publishers but by others. We know the new Inkling product there's two companies trying to raise venture capital right now to compete with them.

I mean, it's moving so fast, we have gone from touch and Braille and recording house to a brave new world and we're trying to say: Okay, it's all got to be here right now or somebody should get litigated against. We don't even know how to define --

>> MARIA PALLANTE: Mark, based on where we are right now, could you possibly think about whether you could live with something a little more vague that I still think belongs in 12. But where in the context of at some point in time in analyzing how the market is doing Congress should assess whether you know all appropriate tools are on the table, including -- and we haven't gotten to this yet but mandatory licensing for example as a safeguard.

Could you live with something as vague as and/or new statutory protections and/or rights of action as appropriate or something like that.

>> MARK RICCOBONO: Um, I would be content with putting forth the idea that there is a viewpoint that believes that we know that today. And that stronger protections for individuals should be something that -- should be considered which I think is weaker than how it is now. Can I correct one element? I think of it differently than what Bruce just said --

>> MARIA PALLANTE: I think that's clear.

>> MARK RICCOBONO: Yeah, with students with disabilities, we're talking about institutions of higher learning that are taking students with disabilities and that are implementing things that are not accessible to them. That already is problematic in the law. And I think we need to decide are we going to say to Congress: Look, we already have some of these protections and they are not being well enforced and actually we can enforce them and students with disabilities are important and this can be done today.

I mean, I think we're a little bit missing the fact that a lot of the stuff we're talking about can be done today. And it's not being done by the institutions that are responsible for doing them. And if the Commission doesn't say that to Congress, I think that's a huge failure --

>> MARIA PALLANTE: But I think we are saying that. That the universities are not meeting their obligations under the ADA. But the way you're getting to it through this one is by creating a right of action against the publishers, right?

>> MARK RICCOBONO: Well, I was switching gears and responding to what Bruce said.

>> MARIA PALLANTE: Okay. Hello?

>> MARK RICCOBONO: I don't think the emphasis is -- I think there needs to be an emphasis in this report that there is a huge failure right now that's going on. And I don't think we're strongly -- I think we're nervous to tell Congress that there's a huge failure already.

>> MARIA PALLANTE: Um, are we nervous? If we were to document that the state of accessibility today is not meeting where we all think it should be. However, we do recognize the digital publishing is a relatively new industry, if we put that all into the context of fleshing this out, and we all looked at it, could we then have a recommendation that is as -- is not so pointed but simply saying. And we're excited about this digital industry but if it doesn't improve what we have today, we would hope Congress would use all tools in its cabinet, whatever. Including for example including new statutory protections for individuals and just leave it at that.

>> MALE SPEAKER: Can we go with --

>> MARIA PALLANTE: I don't know how else to write it if you're going to take that out of there --

>> BRUCE HILDEBRAND: Again, I don't think we can keep it on publishers. You can't paint the target on us.

>> MARIA PALLANTE: No I just took all people out of it. I had one sentence.

>> MALE SPEAKER: Say it again Maria.

>> MARIA PALLANTE: As I said I think it's really a question for Mark at this point because it's his -- the question is are we going to reword this. So essentially we're looking at 12. And we're putting in more context there. And we're saying the market today is not perfect. Not remotely perfect. However the digital publishing industry is very exciting we all have a lot of hope for that hour we're all -- however we're all realists and we urge Congress to keep a careful eye on it and if at some point it is not achieving accessibility, through the monitorings of Congress, then Congress should not rule out things that are a little more drastic, including, for example, compulsory licensing, which is in Section 12 -- Recommendation 12 and/or creating new statutory protections for individuals.

>> MALE SPEAKER: We have agreed that we have two areas and this is to Mark's point we have one failure right now which Gaier challenges because the argument is is that no student is willing to complain and Gaier's discussions with me on and off of this phone and places is that's not the case. They are very quick to complain.

>> MARIA PALLANTE: In California she said.

>> MALE SPEAKER: Okay. Well, that's it -- okay. But the point is okay we've got multiple areas that constitutes I don't know if we would call it the universe or the market that we have the campus or technology firms or AT firms one of the key things in there the thing that you wrote there it said digital publishing can we call it the digital sector.

>> MARIA PALLANTE: Yes good point. You're right.

>> MALE SPEAKER: And other elements that are, you know -- that are supposed to provide the services, however you legalize that. Is that -- everybody is saying we've got multiple problem points including at the university level including at the Federal level. State level.

>> MARIA PALLANTE: I think everyone is in agreement including the author of this provision that we don't want to single out publishers.

>> CHAIR DIETRICH: And we do need to -- if you're going to cover any more of this we probably should move on. We only have 15 more minutes for this discussion.

>> MARIA PALLANTE: We will move on but I actually feel a little bit like we just had a little bit of a break-through Mark you're going to think about it more.

>> MARK RICCOBONO: Yes.

>> MARIA PALLANTE: Okay. Thank you.

>> PETER GIVLER: This is Peter just before we get away from this all together I think you're doing a terrific job of pulling this together. And I would really like to see just some draft language if you could rewrite 12 and circulate it, I think that would be terrific.

>> MARIA PALLANTE: Okay we'll do that and the charge I think as I understand it that we're going to add more about how the market is not quite working right now and we all are excited however about the future but we're not so innocent to think that Congress can let that go without marketing and if that happens at some point and we're not the experts on what this is then they shouldn't hesitate to look at other things. Right? We're going to embed all of that and among those other things might be new statutory protections. So we'll write that and we'll send it back out to you guys. All right.

>> GEORGE KERSCHER: This is George. So if we're going in that direction -- if we're going in that direction and I think this needs to be done anyway is we have to look at some things that we might be able to do to help that market develop. And maybe this is the domain of the market model. But I think that these things would be coupled. So we will make -- we should make recommendations on what can be done to encourage the development of the accessible marketplace.

>> MARIA PALLANTE: That makes more sense to me actually that you would develop the state of the market in the report and the excitement of the future market and then we would reference -- we reference that and then say, however, should it not work. And then come back to legal I think that makes a lot of sense. We'll still do a draft but I'm just saying if you end up taking it out of ours and sticking it into yours that makes a lot of sense or taking what we do or embellishing it. Perfect. Thank you, guys, what number are we on. That was 8.

So 9. This one I'm hoping to do quickly. This one got overedited by a lot of people and the result is it's a little bit of a mess. So this one was tied to grant money of institutions initially and essentially it said if you're going to accept grant money and I think there's some indication that this is already the case. But if you're going to accept it, you have to aggressively educate your faculty about accessibility.

And this came in because there was some discussion at one of our early meetings about how faculty freedom is sacred and in all of the things that we're talking about were all of these -- where all these members of the ecosystem are being held to some accountability that faculty were somehow off limits. And I'm just paraphrasing and I'm not saying this is the consensus of the committee but these were viewpoints that were circulated and I think there was a little bit of backlash to that along the lines of if you're going to accept Federal money, you cannot use that Federal money to let your faculty prescribe to students instructional materials so the grant money part of this got edited out of this by accident but that's really what this recommendation was about.

Is DOE on the phone?

>> BETSEY WEIGMAN: Hi, this is Betsey, I'm here. I guess I would just say I think from reading this, it seems like these are requirements that we really already have in place. I mean, Section 504 requires that no qualified person with a disability shall on the basis of disability be excluded from participation and denied benefits or otherwise subjected to discrimination under any program or activity that would receive financial assistance and grant money would fall under financial assistance so there's already course under the Section 504.

>> MARIA PALLANTE: What do they require they show you this is just really the general counsel focusing like acidly there's something they have to certify this is really about could there be some kind of process instilled at least at some of the bigger universities where they would have to actually sign a certification that their faculty have been aggressively educated.

>> BETSEY WEIGMAN: It's more like a procedural requirement is what you're looking at here I didn't interpret it as that but like you said it's been edited a lot.

>> MARIA PALLANTE: It's a little bit unreadable at the moment but that's the idea.

>> BETSEY WEIGMAN: I think if that's the crux of it that having universities sign extra certification or documentation that they have -- if they have educated their faculty I have no problem with that.

>> MARIA PALLANTE: There's no hook there's no remedy if I'm a general counsel at the University of Arizona I'm like oh I have to sign this I hate signing stuff like this. Have we educated our faculty and then there's some program where faculty are required to do an online course or something. And at some

point there's enough good faith knowledge that they would feel comfortable signing off on that.

And the upshot, though, is if they sign it and it's not true there's actually no -- there's no stick on this. But I think the question for the group is: Is there harm in this? Does it make sense to you? I mean these are kind of little angle sticks.

>> MARK RICCOBONO: Maria this is Mark I don't really see this as a legal issue it's the sort of a best practice issue and I think actually in bringing it up in a legal context it confuses the freedom of speech issue. I mean the university has the obligation to provide access regardless of what their faculty selects and if their faculty selects the infamous you know small town brochure, the faculty can do that. The --

>> MARIA PALLANTE: They can't use Federal money to do that, though, that's this would do.

>> MARK RICCOBONO: Well that's already true, right? Well, I think it should already be true.

>> MARIA PALLANTE: I think it's only a legal issue -- go ahead.

>> MARK RICCOBONO: But the university even if that faculty chooses that brochure the university still has the obligation of making it accessible it doesn't preclude the faculty from selecting it.

>> MARIA PALLANTE: This wouldn't either this would do two things it would require a certification that you have an educational program about your -- for your faculty about accessible because we have just been hearing a lot about faculty Faculty are not a monolith we have professors and adjuncts and instructors and people who come for one semester there has to be some minimal bar for educating the faculty that's Step 1 Step 2 would be the Department of Ed could not give grant money without some additional little bar being crossed.

>> WOMAN SPEAKER: Maria you and I have talked a bit about this one of the things we have talked about is the Department of Ed does a lot of training grants for training people to become teachers. And certainly I would think -- and we do this often. We write in assurances that people who are receiving these grants, the universities that are receiving them would ensure that their faculty would understand and would be teaching these standards, too.

>> MALE SPEAKER: Yeah, I think that's a great hook.

>> MALE SPEAKER: That's something we could do in there and we do it with different kinds of things. We have talked about at least in the Department of Special ed making sure curriculum of all of the things we fund include these kinds of measures in them.

>> WOMAN SPEAKER: Yeah.

>> MARIA PALLANTE: Okay. So what do you want me to do on 9?

>> CHAIR DIETRICH: This is Gaier I want to raise another point here --

>> MARIA PALLANTE: Hold on I don't want to lose what just happened because I didn't quite understand how to fold it in so Glinda what would be the upshot for this that aggressive education of faculty would include for example Department of E training.

>> GLINDA HILL: Not Department of Ed training but that -- let me think. But --

>> WOMAN SPEAKER: They would have to have a training component for faculty. If they were receiving Department of Ed money.

>> MALE SPEAKER: Yeah, I think that the best way to get at this -- this is Dave, to get at this for our Commission is for me to go back and get some more information from our higher ed folks who are unfortunately not on the call right now. But we could target this in the same way that Linda was outlining for K-12 IDEA type work we could try to target this through our postsecondary shop so that would be the way to try to do that. And that would be circling back to Mark's point, that would be beyond the funding and the grant programs that we already have to provide training in this area.

>> MARIA PALLANTE: Yeah and I don't think -- when we talked about this one earlier on I don't think we were trying to burden the Department of Ed with more, you know resource straps this is just -- well there is a component there that, you know, this is a recommendation, right? You could come back and say we're not really equipped to enforce this. But the recommendation is really look all of the universities out there, you need to have some minimum program in place to educate your faculty about accessibility. And I have been to the NACUA conferences where all of the lawyers show up. And this would be one of the little things on their annual conference list to do along with Sarbanes-Oxley best practices and what to do with the medical school liability and the drunk students it's just a very -- I don't see this as a big deal.

>> WOMAN SPEAKER: I would suggest not limiting it to faculty members.

>> MARIA PALLANTE: Who else assigns materials.

>> WOMAN SPEAKER: Faculty and staff. You have department heads. The other thing is that in actually being on campuses, one of the biggest issues for disability services is that there's a perception that all accessibility and accommodation is a disability services problem. That you know we don't deal with it as a campus we send it over there to those people and they deal with it and there's actually very little understanding in fact that it is a campus responsibility and that disability services offices are just set up to assist campuses. But it's not just their issue.

So I think that, you know, campus presidents need to understand this, not just faculty members. Everybody needs to understand this who is in decision making on campus.

>> MARIA PALLANTE: Okay. So Dave and shop, do you guys want to take a crack at fixing this? Or reworking it or at least getting back to us.

>> DAVE BERTHIAUME: Absolutely, we will.

>> MARIA PALLANTE: Great, thanks. The next one is really also a little bit messed up but the general gist of 10 is that we all know that DSS offices operate like crazy to accommodate the students that they are charged with serving.

However, the technological question is as materials become more complex, more interactive and more media rich, is it actually the case that the operations reasonably happening in those offices are a reasonable accommodation under the ADA.

Put another way, is a scan a substitute for some media rich book that's assigned by a professor. And there's really -- I mean it's really a question more than a recommendation. And just something to -- we could fold this into the report in other ways. It doesn't have to be pulled out in this way. The second part about the authorized entities and whether DSS offices are authorized entities I think like an earlier recommendation we were going through probably should be pulled out and put into the last recommendation which is all about looking at the Chafee Amendment.

I just realized that while looking at it this morning that that's another kind of Chafee phrase component prong that belongs in the last recommendation.

So why don't I just move to Recommendation 11 quickly. We just talked about it briefly but this would be are there

incentives and safe harbors and things that could be put into play on the carrot side of the equation to help publishers and manufacturers if that's applicable. Do everything in their power to produce accessible materials including on the postsecondary institution side the creation of some kind of safe harbor to the extent they utilize materials that have met the standards of the new standards Board standards.

(Chuckles).

>> MARIA PALLANTE: I'm dwindling here.

>> WOMAN SPEAKER: How many times can you say standards in one sentence.

>> MARIA PALLANTE: We thought this was kind of a very elegant and creative kind of equation. Like the publishers are protected because the universities would be compelled to purchase only from those who were good citizens and doing the right thing in terms of the formats they are producing and then they would get some kind of presumption or safe harbor because they are buying the materials that have the little gold seal on them because they have met the standards board standards then the question came really from the civil rights experts from the Department of Ed you can't really mess with the civil rights actions of the student by giving the university some added protection. So you couldn't create a complete safe harbor remains for Congress could they create some kind of presumption or something like that that would give universities some cover that they are doing the right thing when they purchase things that have this agreed standards seal or whatever it is.

>> CHAIR DIETRICH: This is Gaier and I absolutely totally agree with Betsey on this that it's a slippery slope to try to mess with the civil rights law at all because it's very conceivable at this point in time to buy something that meets the 508 standards that is not going to be accessible for every student with a disability who needs it and for the campus to be able to say well we don't need to make it fully accessible we don't have to provide this accommodation because afterall we followed the standards and so it's all okay.

I really would be extremely dissatisfied if that went into this report.

The other thing that what I would like to see in addition to what you're talking about on the publisher side I would like to see us include language such as that that's in the NIMA standards about protections for publishers that if they are making a format available for a student with a disability, that they are protected from the other people who are downstream in

terms of whose copyrights that they are holding just for that book where they may not have actually the ability to pass on the pictures or whatever I think that's absolutely crucial that we include that.

>> MARIA PALLANTE: I strongly oppose that. Really, really sorry to say that because I understand where it's coming from and with apologies to the publishers on the phone. In this context we're talking about the open market. So what you're essentially saying is you're indemnifying the publishers from copyright infringement from authors because they have incorporated those works into their books simply because they are selling them to a university it's very different.

>> CHAIR DIETRICH: That's not what I'm saying.

>> MARIA PALLANTE: It's very different in the NIMA context because you're dealing with exception to copyright there not the open market.

>> STEPHAN SMITH: Yeah, Maria, this is Stephan. I don't understand where the last conversation just went.

(Chuckles).

>> MARIA PALLANTE: So that was a very sweet way of saying that Stephan so back to Recommendation Recommendation 11 is that what you're saying the response about the civil rights issue and hampering that is a really strong one but are we also saying inadvertently that we don't have any faith in the new standards Board to create -- in other words, what's -- if we're going to create a new standard that both publishers and universities and the text sector and the disability community can get excited about, why shouldn't people be able to rely on that?

I don't think 508 is the right standard. I think for this one, this is tied to the new standards.

>> CHAIR DIETRICH: So let me just give a parallel with physical standards with the ADA. It is actually possible to be literally in conformance with the standard and still to have something that is not actually very usable.

>> MARIA PALLANTE: You said that. You said that already. But what I'm asking is if there's a new standards Board that the disability community publishers and text sector and university world would have to agree was accessible before there was a stamp of approval on it. That's what this is about.

>> CHAIR DIETRICH: I know that. And that's what I'm trying to tell you is that even when it is accessible, that there's a big difference between accessibility and usability. And that is actually something that's very well documented in

this field. So you can have something that's technically accessible that may not be as usable as it needs to be in order for somebody to be able to function with it at a high level.

>> MARIA PALLANTE: Then why would --

>> CHAIR DIETRICH: Then they have to lodge a complaint if it's something that's just not working for them or to request that they have a further accommodation of that.

>> MARIA PALLANTE: And that's not being taken off the table or taken away from them the question is is there any benefit from agreeing to the new standards set by the new standards Board.

George, are you still on the call.

>> GEORGE KERSCHER: George is here.

>> MARIA PALLANTE: What do you think.

>> GEORGE KERSCHER: Can you repeat the question.

>> MARIA PALLANTE: What benefit if any does one get from participating in the new standards Board?

>> GEORGE KERSCHER: People that are participating in it themselves like the representatives or following those recommendations.

>> MARIA PALLANTE: Well if you're the University of Arizona and you say we are issuing a decree that we will only allow our faculty -- to the extent there are multiple versions of something on the open market we are instructing folks to purchase only the accessible version that meets the stamp of approval of the new standards Board.

>> GEORGE KERSCHER: So those endorsements from universities and from disability communities and things like that go a long way in promoting the use of the standards. It doesn't sound like there's any legal requirements for people to use it. So it's going to be voluntary pickup in the market. And the -- one of the incentives if you do this you can avoid regulatory things down the road. So I think those kinds of endorsements are terrific. You know, that would be great for a university -- any university to endorse.

>> CHAIR DIETRICH: Are we still talking about Recommendation 11.

>> MARIA PALLANTE: Yep.

>> MALE SPEAKER: I'm with Stephan I've gotten lost in the maze.

>> CHAIR DIETRICH: Ditto.

>> MARIA PALLANTE: Okay so let me repeat the recommendation. Should Congress be creating incentives for players in the ecosystem including publishers and universities. So for the publishers could they be things like market supply incentives, tax incentives, and for postsecondary institutions could it be some kind of presumption under the ADA or something else that isn't here at the moment for participating in the production and purchase depending on who you are of materials that meet the standards of the ecosystem standards group.

Do we want to suggest to Congress that they consider incentives for the players in the ecosystem.

>> GEORGE KERSCHER: What are the incentives?

>> MARIA PALLANTE: Sorry?

>> GEORGE KERSCHER: What kind of incentives?

>> MARIA PALLANTE: Well, the only ones that have been put on the table by the Legal Task Force are tax incentives for publishers and a possible presumption under the ADA for the postsecondary institutions.

And -- what Gaier has pointed out is that this would never work today for example 508 standards or anything that we're dealing with in terms of someone saying it's accessible but it's really not. It can only work -- the question is: Could it work if there's a new standard that everybody who should be participating participates in setting. So that the -- that's the other recommendation.

>> MALE SPEAKER: I think where Gaier is going at and something that we worry about -- I mean please give us incentives, okay.

>> CHAIR DIETRICH: Honestly stated, Bruce.

>> BRUCE HILDEBRAND: You'll take some, too, right, Gaier.

>> CHAIR DIETRICH: Absolutely.

>> BRUCE HILDEBRAND: Give me, give me, give me some incentives. What she bumps up against is real world. Okay we have a meeting. There's this standards boards and they come up we found the new toy the new tool the new method. It works.

A technology company comes out the next day with something that is accessible but exceeds the device the student is using. So now the student is coming from an accommodation and is willing to sue. The school is happy they met the standard. The AT, publisher or whomever is happy they met the standard the kid gets the latest thing doesn't work, litigate. So that's where when you're something -- when you're in

something that moves this fast how do we accommodate I guess is my question you're the legal expert Maria.

>> MARIA PALLANTE: No; no. Believe me I'm no legal expert when it comes to technical standards or ADA.

So I think what the problem with this recommendation is is that multiple people put multiple incentives into it and it's like apples and oranges so the incentives for the publishers -- so one question is should we recommend that Congress give publishers tax incentives or other kinds of market supply incentives for publishing accessible formats and I think the underscore there is particularly where they might not be cost effective right? How can we recognize, look, we know that it might be a little more expensive but we really want you to do it so here is the tax incentive that's one then the other side of the coin and I think this may be where we're having trouble is if universities were to compel their faculty or -- yeah, I guess it's their faculty and staff to only purchase or to start with the premise that they want to purchase the accessible formats, even though they are already required to, could they get something -- some carrot, as well.

And it sounds like what I'm hearing is no carrots for the university. But maybe, sure, why not for the publisher.

>> MALE SPEAKER: Actually, Maria, I think universities, it's not being as broadly enforced as I think it could but universities already have the carrot which is Federal dollars at all.

>> MARIA PALLANTE: Okay.

>> STEPHAN SMITH: This is Stephan. You know, the Federal dollars is really not a carrot. It's a fix. Because it's framed in that if you don't do this, you can't have any. That's not how a carrot works. I do appreciate you going back to this. I wasn't being a wise anchor when I said I didn't understand. I appreciate it because I do now. I think that I'm like Bruce. I think recommending incentives is a good idea. Especially because a lot of what we're doing is recommending things that may not go down so palliatively.

>> MARIA PALLANTE: Could we word it more broadly then.

>> STEPHAN SMITH: That's what I'm wondering since it is just a recommendation. You know because I hear Gaier absolutely bringing up very valid concerns that make sense, too. I'm wondering if there is a broader way to state this so we can put the idea of incentives out there as a notion without going so far as to get ourselves in trouble or look incredible.

>> MARIA PALLANTE: I think that's great. I think you just solved it. So if we were just to say for example Congress should consider create -- should consider creating incentives for publishers, universities, manufacturers of devices and other players in the ecosystem, for example, tax incentives, supply incentives and we could say presumptions or safe harbors under the law just leave it vague and they would have to hear in-depth testimony and examine it and it wouldn't necessarily be tied to the ADA or existing disability law. And that might give the standards board some wiggle room, too.

>> CHAIR DIETRICH: Actually I think you could do the same sort of incentives for colleges if you say you purchase accessible or if you buy accessible materials, one of the concerns about college is that's going to cost some more. And so maybe there would be some way of saying there's a pool of money that you could get some of if you say you purchased 100% accessible.

>> MARIA PALLANTE: You win an award. Okay. So why don't we try to pick that up a notch and take it a little bit more high level. And we're coming to the end.

Do you want me to stop and -- are we way over? Where are we.

>> CHAIR DIETRICH: No if you can go just five more minutes Maria or four more minutes.

>> MALE SPEAKER: I would say five to ten and I don't know if there's any way to finish off 12 or 13 but we can give it a whirl.

>> WOMAN SPEAKER: We're really coming up with some good suggestions that are making some break-throughs that's what I'm hearing as an observer. Yeah, go.

>> MARIA PALLANTE: Recommendation 12 in the event that the market does not make materials available over time, Congress should review all relevant and applicable laws. Now there's a reference in here to collective licensing. That is an earlier recommendation in the 1 through 5 camp that we didn't cover yet but that's just another kind of market model issue that basically says direct licensing is hard because you have to clear lots of rights one at a time sometimes that's appropriate. Sometimes that's a disaster. Let's look at kind of pilot projects and such to figure out if there's some kind of blanket licensing we can do.

So that's just to understand that paren there. But in the event that all of this stuff doesn't work, Congress should really be -- really be equipped to keep an eye on things and not

hesitate to consider you know more drastic measures like compulsory licensing which is the substitute in the Copyright Act for market failure. That's when Congress throws up its hands and says: We have to mimic the market rates. We have to mimic licensing. We have to regulate it heavily because it's just not working on its own and it's too important to let it fail.

So that's one. And then we had agreed to try to put in here Mark's more general proposal. He's going to think about it of course. But could we also say and possibly additional statutory protections for individuals.

That's what that is. And I think the question is: Are people okay with that? I'm sure the publishers aren't thrilled with it because it is kind of a different scenario right that we want the market to work but if it doesn't, there could be some legislative attention on this.

And is there anything that should be in here that's not.

So we have maybe statutory protections for individuals. We have maybe compulsory licensing. Is there anything else that people are thinking of?

>> MALE SPEAKER: One thing that just because the market we read now the market is many -- is made of many, many, pieces. So -- we agree now that it is. So this again the rifle shot to the publisher. So can we get beyond just us all the time.

>> MARIA PALLANTE: Yeah and actually this doesn't reference publishers.

>> MALE SPEAKER: Well when you get to the collective licenses and all of that because that's where our communications come from although Microsoft does licensing all day long, that's their business. But that's where they are. And that's where we actually as an industry are moving is in licensing our materials. But --

>> MARIA PALLANTE: Right and we want you to.

>> MALE SPEAKER: But licensing partnerships now you have really tightened the window and you are really talking about us.

>> MARIA PALLANTE: Okay. So fair enough. If we take out including collective licensing in the parens and say in the event that the applicable market -- or the markets relevant to digital publishing and device manufacturing. We can wordsmith this but if your general point is there are multiple micro markets here and multiple players in the ecosystem I actually think we have agreement on that.

>> MALE SPEAKER: I'm good for it.

>> MARIA PALLANTE: The publishers can live with this.

>> MALE SPEAKER: I think we can do it I'll have to go out and get that but I think we can live with it if we just take my people off the center target, the center of the target. After that we're just -- yeah. And everybody flops somebody is going to do something anyway and they should.

>> MARIA PALLANTE: I'm moving on Recommendation 13 Congress should review the scope effectiveness and current function of the Chafee Amendment to determine if each of its key component elements as well as the statute taken as a whole is serving appropriately and that means -- well I think we all know this by now but Chafee is narrow. It applies only to the reproduction and distribution of materials. It doesn't allow for derivative works. It doesn't allow for the performance of works which is what happens when you're assessing a work online sometimes when you're getting something to play like an audiovisual work. None of that is covered. The beneficiary class is wrapped up in this one. The special format is wrapped up in this.

That's a dated issue. It's a difficult issue because when you're talking about Braille it makes sense.

If you're talking about broader materials, it begins to sound like we're condemning certain population to only have inferior formats because of the Chafee Amendment.

So this one -- I don't want to say there's a lot of disagreement about including a recommendation like this. But I would say there's probably differing incentives for doing so.

Discussion?

>> WOMAN SPEAKER: To Maria would this then also revisit that issue of what it means to have a print disability and the evidence that trained facilities are based --

>> MARIA PALLANTE: Yes this is where it would be and that's why I say for each of the prongs that play in Chafee, you're going to have disagreement about what it should say if it were to be amended.

But it seems to me that lots of people would like to look at Chafee.

>> MALE SPEAKER: The biggest thing is, you know -- it's in the market models in our communities in there. And I believe it's in some of your comments. This goes to market, if -- when Chafee -- if Chafee gets expanded, the exception is expanded,

the market diminishes. And that's then where you have gone head to head with your objective of moving it closer to the market and away from Government subsidy at all.

>> MARIA PALLANTE: Right. But Bruce, let me -- I know it's really hard to do this one justice in just a few minutes. But that's accurate. However, I don't think it would play out like that. I think there are some that would say expand the beneficiary class. Leave -- leave everything else the same.

That's a kind of short sighted view because again the special format issue is a problem. And what you can do with the works is limited.

The -- another way to look at it is to look at it through the work that Tuck Tinsley's group is doing. Which is what does it really -- if the market is working fine, what isn't the market serving? And how do you create those materials for those people who are not ever going to be served by the market if, you know, for whatever reason. Either because of their disability or because of the kind of work at issue.

Maybe the works of medical students. Maybe you know somebody is taking Chinese. Maybe it's the cutting edge Braille. But my view is we always need Chafee. Chafee is always a safety net we have to have an exception in the Copyright Law that serves that purpose. So does it need to be examined and reworked? And if so, for what purpose. So I would -- I would think that if Congress did look at Chafee, it would look at it that way. What's outdated about it. Where is the controversy and who are we trying to serve with Chafee.

>> BRUCE HILDEBRAND: I'm going to defer at this juncture and wait for your final language how about that for getting 13 done in a hurry.

>> WOMAN SPEAKER: Yahoo.

>> MARIA PALLANTE: I'm not rewriting any of 13 unless somebody has got specific instructions.

>> BRUCE HILDEBRAND: Let me go back and revisit because I'm sure there will be revisits by a number of parties on this so yeah let's just let it ride for now and if we have comment we'll make them in writing and let everybody look at them.

>> MARIA PALLANTE: Okay the publishers have already commend on this and -- commented on this and your edits are in here let me ask others on the phone call is there anybody on the phone who feels we should not be recommending that Congress look at Chafee? Okay. Just so I know that you're all awake, does everybody agree we should be telling Congress to look at Chafee.

>> BRUCE HILDEBRAND: They all left Maria.

>> CHAIR DIETRICH: Yes, and thank you, Maria for a beautifully succinct explanation of that. That was probably the best explanation I've ever heard. So thank you.

>> STEPHAN SMITH: Absolutely.

>> MALE SPEAKER: Very, very good.

>> WOMAN SPEAKER: Very good.

>> MARIA PALLANTE: All right. You're an easy crowd.

>> WOMAN SPEAKER: Not always.

(Chuckles).

>> DAVE BERTHIAUME: Gaier are we ready towards moving to wrapping it up for the folks who remain.

>> CHAIR DIETRICH: Maria doesn't to make any final comments yourself just to wrap this up.

>> MARIA PALLANTE: No. I think thank you to everyone for your good faith efforts and collaboration. I think this is going to be a great report.

I think where we are is that there are some provisions where people are still thinking a little bit and we'll accept comments and I'll work with skip and with -- Skip with and with Dave to make sure those are reflected and recirculated.

>> CHAIR DIETRICH: And I would again like to thank Maria and everyone on the Task Force who was dealing with these legal issues. It always lined up to be one of the most difficult areas and I think you all did just wonderful work on it and handled it extremely well and Maria thank you for taking such a wonderful, neutral and open and inclusive position. I really appreciate that. And I know others on the Commission do, as well.

So I would like to see if James Wendorf, my Vice Chair has rejoined the call?

No Jim I'm thinking. Okay so right here at the end we're getting down to the last ten minutes. I know there were quite a few people on the call today who were very quiet and I just want to make sure that there's no one on the call who just sort of got, you know, didn't get off the mute button in time or you know felt like well you know my comment has been passed by now. I want to make sure that this really is inclusive and if there's anyone who has any final thoughts on this process that we get those now. So particularly if you have not spoken or you

know -- at least more than just a very short comment, could you please let us hear from you now?

>> LINDA TESSLER: This is Linda Tessler can you hear me.

>> CHAIR DIETRICH: Yes.

>> LINDA TESSLER: Okay. I just -- you know in these areas of law and publishing I'm more of an observer. And I'm just impressed with the progress that you make and the civility with which we treat each other and try to some meeting of the minds. And it's really been a privilege to watch this process occur.

>> CHAIR DIETRICH: Thank you.

>> LINDA TESSLER: You're welcome. And thank you for facilitating it.

>> CHAIR DIETRICH: Anyone else who would like to make some final comments here at the end.

>> DAVE BERTHIAUME: Gaier this is Dave I hope I'm not cutting any members off but I just wanted to second or third or whatever it is Maria's wonderful job today facilitating and setting what I just thought was a perfect model for how we can proceed in Seattle as we work through other recommendations or circle back and hit some of the items here that we will be refining over the next two weeks. I'm really looking forward to the hospitality of Stephan and the AHEAD group in Seattle. And the meeting that's coming up there on July 11th and 12th. I think it's going to be hopefully we can make and continue to make as much progress as we did today.

So I look forward to seeing everybody in person there.

And if there's any questions just logistical things please touch base with Skip and with CAST, as always. And I think we outlined before what our plan is. And we will try to follow up as soon as possible in writing. It may mean changing some dates or some meetings and calls in August. But we'll work through that. We will sort that out.

And we'll communicate that as quickly as we can.

So . . .

And Skip, anything else on your end?

>> SKIP STAHL: Nope, I'm all set. Thank you.

>> CHAIR DIETRICH: Okay. Thank you. So just a reminder, our next meeting is at the AHEAD Conference at the Sheraton Seattle in downtown Seattle, Washington. That will be on July 11th and 12th. The 11th we will be starting at 8:30 a.m. On the 12th again we'll be starting at 8:30. And then our meeting

on the 12 will be followed that evening by a mandatory public hearing for all of the Commission Members. We expect all of the Commission Members to be there. I think you won't regret taking the time if you haven't been to one yet it really is quite amazing to hear people's individual stories I also do want to invite everyone who is on the call again to dial in or if some of you are there in person, that would be wonderful. Feel free to come up and introduce yourselves during a break. We would love to know who you are.

Who has been following us. And again if you have any comments at all on today's proceedings please use the e-mail address we have given you the PSC@CAST.org again PSC standing for Postsecondary Commission at CAST.org.

So Dave, Skip, unless one of you has any final thoughts I think we're ready to adjourn the meeting.

>> DAVE BERTHIAUME: Nothing on my end.

>> SKIP STAHL: No I'm set on this send Gaier you did a great job.

>> CHAIR DIETRICH: Thank you again to everyone thank you again to Maria lovely job and I look forward to seeing all of you in July in Seattle.

>> WOMAN SPEAKER: Thank you, Gaier, bye.

>> CHAIR DIETRICH: Bye bye.

(Session ended at 4:57 p.m. ET)

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