

DRAFT LANGUAGE FOR PROPOSED CLASS 3
SUBMITTED BY AACCS LA, DVD CCA and JCCO

(i) Motion pictures (including television shows and videos), as defined in 17 U.S.C. 101, where the motion picture is lawfully acquired on a DVD protected by the Content Scramble System, on a Blu-ray disc protected by the Advanced Access Content System, or via a digital transmission protected by a technological measure, where:

(A) Circumvention is undertaken by a disability services office or other unit of a kindergarten through twelfth-grade educational institution, college, or university engaged in and/or responsible for the provision of accessibility services for the purpose of adding captions and/or audio description to a motion picture to create an accessible version for educational uses for individuals with disabilities;

(B) The educational institution unit in paragraph (b)(2)(i)(A) of this section has, after a reasonable effort, determined that an accessible version of sufficient quality cannot be obtained or accessed whether in physical media or via digital transmission at a fair market price or in a timely manner, including where a copyright holder has not included an accessible version of a motion picture included with a textbook; and

(C) The accessible versions are provided to individuals with disabilities and stored by the educational institution in a manner intended to reasonably prevent unauthorized further access to or dissemination of a work, except for storage that allows for future reuse of the accessible versions by individuals with disabilities.

(ii) For purposes of this paragraph (b)(2), “audio description” means an oral narration that provides an accurate rendering of the motion picture.

(iii) For purposes of this paragraph (b)(2) “individuals with disabilities” means students, faculty members, and/or staff members with disabilities at the educational institution, college or university.

(iv) For purposes of this paragraph (b)(2), “creat[ing] accessible versions for students, faculty, or staff with disabilities” means adding captions and/or audio description to a motion picture when the educational institution unit in paragraph b(2)(i)(A) has a reasonable belief that the motion picture will be used for a specific future educational activity of the institution. Furthermore, the addition of captions and/or audio description must occur promptly after circumvention.

(v) For purposes of this paragraph (b)(2), “accessible version of sufficient quality” means a version that in the reasonable judgment of the educational institution unit in paragraph b(2)(i)(A) has captions and/or audio description that are sufficient to meet the educational needs of the relevant individuals with disabilities and are substantially free of errors that would materially interfere with those needs.

(vi) For purposes of this paragraph (b)(2), if circumvented copies of motion pictures used to make accessible versions need to be retained for functional purposes related to the accessible versions, then such copies must be stored in accordance with paragraph (b)(2)(i)(C). Otherwise, such circumvented copies may be retained only as long as reasonably necessary to create the accessible versions.

(vii) For purposes of this paragraph (b)(2), “stored by the educational institution in a manner intended to reasonably prevent unauthorized access or further dissemination of a work” includes the use of technical protection measures such as encryption, authentication, copy controls and passwords.