

**Before the Copyright Office  
Library of Congress**

In the Matter of Rulemaking	)	
	)	
	)	
Exemption to Prohibition on	)	Docket No. RM 2002-4
Circumvention of Copyright Protection Systems	)	
For Access Control Technologies	)	
	)	

**Comments of the American Foundation For The Blind**

Class: Literary

Summary: The American Foundation for the Blind proposes an exemption for the class of works defined as "literary." We propose this exemption because currently deployed anti-copy technology does not support fair use of this class of works intended by Congress.

**INTRODUCTION**

These comments are submitted in response to the Copyright Office's Notice of Inquiry with respect to proceedings mandated by the Digital Millennium Copyright Act, seeking further comment to determine whether there are particular classes of works as to which users are, or are likely to be, adversely affected in their ability to make non-infringing uses due to the prohibition on circumvention.

The American Foundation for the Blind (AFB) is a leading national resource for people who are blind or visually impaired, the organizations that serve them, and the general public. The mission of AFB is to enable people who are blind or visually impaired to achieve equality of access and opportunity that will ensure freedom of choice in their lives.

The proceedings mandated by the Digital Millennium Copyright Act are of critical importance to the lives of people who are blind or visually impaired. Information in digital formats provides the opportunity for people who are blind or visually impaired to have access to and use of information at the same time and in the same manner as all users of that information including the fair use of that material, a right which Congress has historically established and continuously upheld. Technological measures that control access to copyrighted works have been developed and deployed which prevent access to and fair use of this material by people who are blind or visually impaired. This is a significant abridgement of those rights. It is also a threat to the way in which people who are blind or visually impaired are educated, work, and conduct leisure activities like reading and entertainment.

At the same time, as a producer of conventional and electronic media and a holder of copyrights, AFB understands and remains firmly committed to insuring the rights of producers of digital materials. However, we are equally committed to insuring non-infringing, fair use of materials in all of these formats including access to the technological measures that control access to copyrighted works.

In these comments we address the class of all literary digital publications, such as e-books. We assert that Congress clearly intended that fair use provisions not be sacrificed in efforts to secure digital content. Yet, publishers and the technology industry have simply designed anti-copy technologies with precious little effort to preserving fair use. Rather, they seem inclined to seek market dominance by closely linking published titles to particular technologies from particular vendors. This is not, we believe, an approach likely to preserve fair use. It certainly cannot preserve the rights of people who are blind or visually impaired to use their synthetic speech and braille devices to access secured content. Indeed, we will demonstrate by example that it fails to provide such access, even when mainstream technology companies have claimed access is provided. Consequently, it is inappropriate for publishers and technology companies to seek shelter against circumvention technologies when those selfsame technologies clearly do not meet the intentions of Congress in establishing the DMCA. We ask the Librarian, therefore, to rule all literary digital content exempt at this time, until security measures are developed which will preserve fair use rights. To the industry, we would suggest investigating the application of well known technologies that can achieve this dual purpose, such as the so-called “Public Key Incryption (PKI)” technologies (see <http://csrc.nist.gov/pki/>).

We provide evidence in the following comments which, we believe, demonstrates that individuals who are blind or visually impaired are now, and are likely in the near term to be affected in their ability to make non-infringing uses due to the prohibition on circumvention on the broad classes of works specified in this Notice of Inquiry.

## **BACKGROUND**

We provide the following information in support of our introductory comments. This information is the basis our specific responses to this Notice.

Congress has historically recognized that the broad class of copyrighted works should, with respect to fair use defense, be accessible to and usable by people who are blind. The legislative history of the Copyright Act of 1976 states that:

Another special instance illustrating the application of the fair use doctrine pertains to the making of copies or phonorecords of works in the special forms needed for the use of blind persons. These special forms, such as copies in braille and phonorecords of oral reading (talking books), are not usually made by the publishers for commercial distribution. While making multiple copies or phonorecords of work for general circulation requires the permission of the copyright owner, a problem addressed in section 710 of the bill, the making of a single copy or phonorecord by an individual as a free service for a blind person would properly be considered a fair use under section 107.

H.R. Rep. No.94-1476, 94<sup>th</sup> Cong., 2d Sess.

Further, in the Supreme Court case of Sony Corporation of America. V. Universal City Studios, 464 U.S. 714 (1984) the Court stated that

“Making a copy of a copyrighted work for the convenience of a blind person is expressly identified by the House Committee Report as an example of fair use, with no suggestion that anything more than a purpose to entertain or to inform need motivate the copying.”  
Id. At 456 n.40.

There are other areas of the Copyright Act where specific limitations on the exclusive rights of copyright owners were made to ensure access for people who are blind. Section 110 (8) excludes performances specifically designed for and directed to people who are blind or visually impaired using particular facilities; Section 121 (the Chaffee amendment) allows authorized entities to reproduce copyrighted materials and convert these materials to accessible formats for the use by blind or other persons with disabilities.

This historical recognition of the importance of access for non-infringing uses for the broadest class of works is critical to use of information by people who are blind or visually impaired. And it grows even more critical as information flows faster and in new formats in the digital world. In the world of the DMCA the issue becomes even more profound because, arguably, it may be a violation of Section 1201 “Circumvention of Copyright Protection Systems” if a reader who is blind or a developer circumvents a technological measure which controls access to a copyrighted work.

## **ACCESS ISSUES FOR PEOPLE WHO ARE BLIND OR VISUALLY IMPAIRED**

We demonstrate through examples that copyright protection measures are already significantly impairing our ability to access information in the new digital content formats. In some instances such information is already only available in digital formats. As digital publishing matures, this situation can only grow worse with clear and unambiguous reaffirmations of our long established fair use right to repurpose content into accessible formats. Further, we maintain that it is possible to maintain fair use access in the broad class of copyrighted works in such a manner that the exemption would not allow wholesale copyright infringement.

For people who are blind or visually impaired, the foundations of access in the digital age are the rights to access and appropriately manipulate any use-level controls; the fair use deconstruction of protected material in order to re-purpose content into accessible formats, and; clear demarcation of media in a manner which allows a consumer to know that use may be restricted. Our first-hand knowledge provides compelling evidence of likely adverse effects on access to the general categories of authorship specified in Section 102 because of the general prohibition against technological measures which are the building blocks of access. Further, we identify technological measures which are the source of the problem and we specifically explain the non-infringing activities the prohibition on circumvention is preventing, and we establish that these prevented activities are, in fact, non-infringing use historically supported by Congress.

To illustrate our assertions, we logged onto [www.amazon.com](http://www.amazon.com) on December 16, 2002, and purchased three titles in digital format:

### **Title 1:**

<http://www.amazon.com/exec/obidos/tg/detail/-/B000056WMY/qid=1040221400/sr=12-2/103-8584181-3179861?v=glance&s=ebooks>

The Imitation of Christ [DOWNLOAD: MICROSOFT READER]

by [41]Thomas A. Kempis

[42][LINK]

[43]see larger photo

List Price: \$5.95

Price: \$5.95

Availability: Available for download now

Edition: e-book (Microsoft Reader) | [44]All Editions

[INLINE] [45]See more product details

## Title 2:

[http://www.amazon.com/exec/obidos/tg/detail/-/B00005R2F7/br\\_ts\\_sh\\_b\\_3//102-7514509-2748938?v=glance&s=ebooks&n=551440](http://www.amazon.com/exec/obidos/tg/detail/-/B00005R2F7/br_ts_sh_b_3//102-7514509-2748938?v=glance&s=ebooks&n=551440)

Really Bad PowerPoint (and How to Avoid It) [DOWNLOAD: PDF]

by [40]Seth Godin (Author)

[41][LINK]

[42]see larger photo

List Price: \$1.99

Price: \$1.99

Availability: Available for download now

Edition: e-book (Acrobat Reader)

## Title 3:

<http://www.amazon.com/exec/obidos/ASIN/B00005Q8VJ/qid%3D1040223059/sr%3D11-1/ref%3Dsr%5F11%5F1/102-7514509-2748938>

Cutting Through the Digital Fog : Music industry's rare chance to reposition for greater profit

[DOWNLOAD: PDF]

by [36]Ashish Singh (Author)

[37][LINK]

[38]see larger photo

List Price: \$5.99

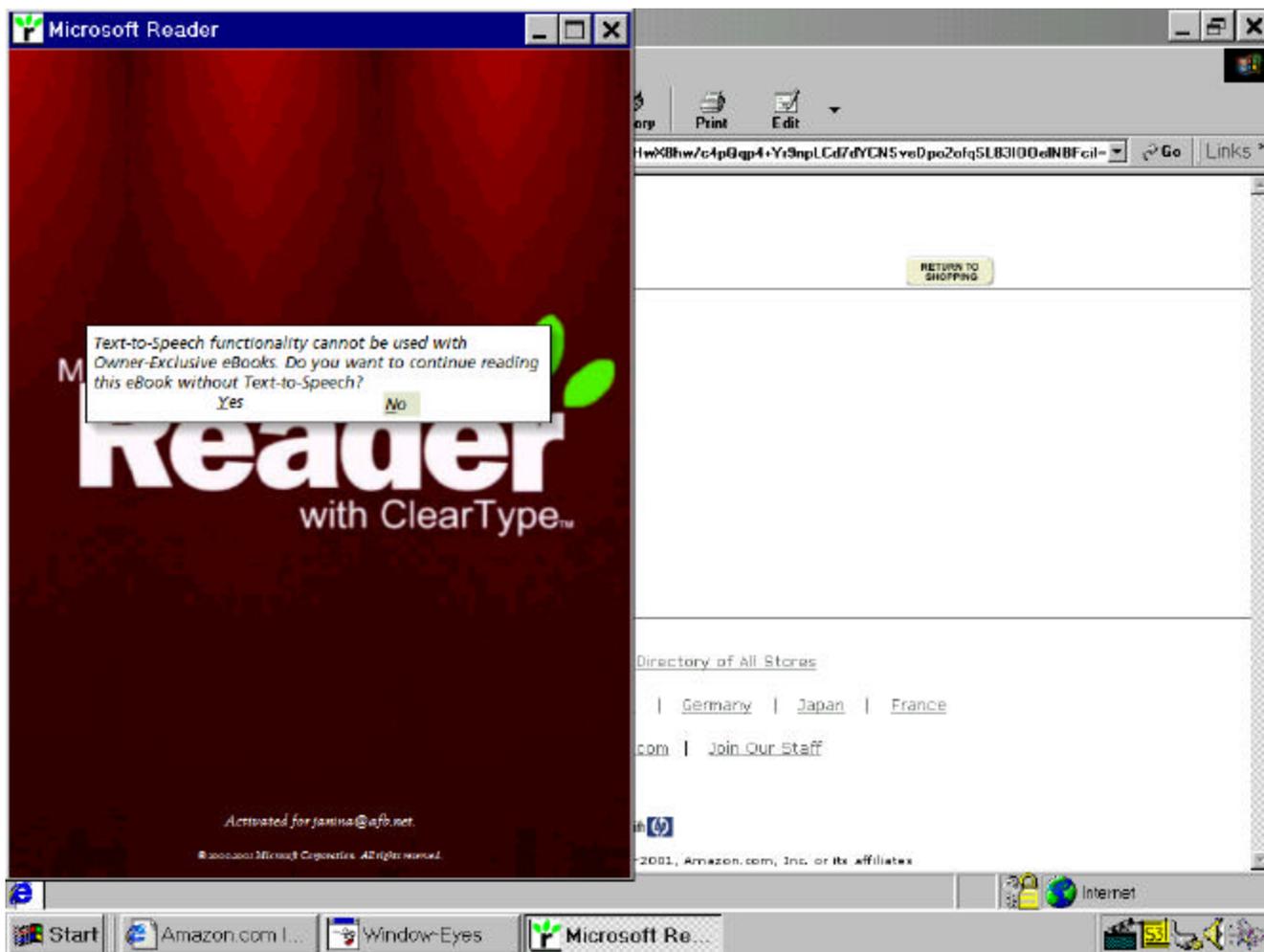
Price: \$5.99

Availability: Available for download now

Edition: e-book (Acrobat Reader)

Only the third title, "Cutting Through the Digital Fog," was accessible using computer interface technology commonly employed by persons who are blind or visually impaired. The first two simply couldn't be read--a circumstance particularly galling inasmuch as "Imitation of Christ" long predates any concepts of "copyright" or "intellectual property management."

Nowhere do the Amazon pages state that this content is only for sighted readers. Indeed, the Microsoft Reader client and the Adobe Reader e-book client are both ostensibly designed to support alternative interfaces for persons with disabilities. Yet, only in the case of "Imitation of Christ" were we even informed that access would be denied to us, and then only after we had paid our money and downloaded the title. . .



SCREEN SHOT UPON OPENING "IMITATION OF CHRIST" IN MICROSOFT READER: TEXT-TO-SPEECH FUNCTIONALITY CANNOT BE USED WITH OWNER-EXCLUSIVE EBOOKS. DO YOU WANT TO CONTINUE READING THIS EBOOK WITHOUT TEXT-TO-SPEECH? YES OR NO

Furthermore, some titles (see bolded items below) are already only in a digital format:

[http://www.amazon.com/exec/obidos/tg/browse/-/660348/ref=ed\\_cp\\_2\\_10\\_b/104-7351149-0380732](http://www.amazon.com/exec/obidos/tg/browse/-/660348/ref=ed_cp_2_10_b/104-7351149-0380732)

1. [28][LINK]  
[29]Into Thin Air [DOWNLOAD: MICROSOFT READER]  
by Jon Krakauer (Introduction) (Digital -- September 2000)  
Avg. Customer Review: 4.5 out of 5 stars  
Available for download now.

Other Editions: [30]Hardcover | [31]Mass Market Paperback | [32]Audio Cassette (Abridged) | [33]Audio Cassette (Unabridged) | [34]Audio CD (Abridged) | [35]Hardcover (Large Print) | [36]Audio Download (Audible.com) | [37]All Editions  
List Price: \$5.95  
[38]Buy new: \$5.95

2. [39][LINK]

[40]Travel Detective Flight Crew Confidential [DOWNLOAD: MICROSOFT READER]

by Peter Greenberg (Digital -- July 2002)

No customer rating available.

Be the first to [41]review it.

Available for download now.

Other Editions: [42]e-book (Adobe Reader)

List Price: \$12.95

[43]Buy new: \$12.95

3. [44][LINK]

[45]Salon.Com's Wanderlust: Real-Life Tales of Adventures and Romance [DOWNLOAD: ADOBE READER]

by Don George (Editor) (Digital -- November 2000)

Avg. Customer Review: 4.5 out of 5 stars

Available for download now.

Other Editions: [46]Paperback | [47]e-book (Microsoft Reader)

List Price: \$11.95

[48]Buy new: \$11.95

4. [49][LINK]

[50]The Travel Detective [DOWNLOAD: ADOBE READER]

by Peter Greenberg (Digital -- January 2001)

No customer rating available.

Be the first to [51]review it.

Available for download now.

Other Editions: [52]e-book (Microsoft Reader)

List Price: \$12.95

[53]Buy new: \$12.95

We were intrigued to observe, furthermore, that some content particular to business uses is very costly:

<http://www.amazon.com/exec/obidos/tg/browse/-/583322/104-7351149-0380732>

Our Top Sellers

Updated Daily

[42][LINK] 1. [43]IP VPN Services: U.S. Market Forecast and Analysis, 2001-2006 [DOWNLOAD: PDF]

Price: **\$4,500.00**

[44][LINK] 2. [45]European eCommerce Update, May 2001 [DOWNLOAD: PDF]

Price: **\$500.00**

[46][LINK] 3. [47]The Personal Computer Market in Saudi Arabia, 2000-2005 [DOWNLOAD: PDF]

Price: **\$4,000.00**

[48][LINK] 4. [49]Projector Attribute Comparative Analysis [DOWNLOAD: PDF]

Price: **\$1,500.00**

[50][LINK] 5. [51]Worldwide Cable Modem Equipment and Services Market Analysis and Forecast, 2000-2005 [DOWNLOAD: PDF]

Price: **\$2,500.00**

Are we expected to simply pay our money up front in the vain hope that sometimes we will be allowed to read? We believe this was not the intent of Congress. We urge the Librarian to reaffirm the long history of copyright law and rulings which explicitly affirm the right of persons who are blind or visually impaired, as well as those providing reading matter to them, to repurpose content into accessible formats, including such content as may be secured by digital means.

Respectfully submitted,

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