

Copyright and Persons with Print Disabilities in the Digital Age

The American Foundation for the Blind (AFB) stands squarely in favor of reasonable and prudent technologies to assist in ensuring that copyright holders are able to receive compensation and protect other legal rights regarding the content they publish in digital formats. However, most proposals we have seen to date purporting to establish technologies to prevent illegal copying or publication of copyrighted content simply do not consider, or address in any way, the fair use rights of persons who are blind and visually impaired. In addition we are greatly concerned that current interpretations of the Digital Millennium Copyright Act (DMCA) make it increasingly likely that technological measures that control access to copyrighted works will prevent access and fair use, rights which Congress has historically established and continuously upheld. We would regard it a serious breach of faith with Americans with disabilities to establish new technologies and copyright provisions which, once again, regard our needs as peripheral and expendable. To this end we offer the following positions on this issue of fundamental importance to this community:

1. Emerging computer, and computer network technologies along with established international standards are bringing access to published information for persons who are blind or who have other print-related disabilities from a pre-Gutenberg type of environment into near parity with non-print disabled readers.
2. Technologies designed to provide content securely should not be based on proprietary unpublished specifications because such systems cannot be accessed by users or by developers of assistive technologies needed by users. In fact, we see an inherent conflict in current law regarding this very issue. Is it legal for developers of assistive technology to study secure distribution technologies in order to provide access to print disabled individuals? The Copyright Act of 1976, its legislative history, and citations by the Supreme Court would indicate it is lawful. Yet current interpretations of the DMCA suggest it is not. We would note that the entire assistive technology field is based on deconstructing and "patching" systems which were never intended for use by persons with disabilities.
3. Accessibility is particularly well served by open, published protocols because everything needed to add accessibility into the technology is exposed, and available. Open consensus standards mean that our specialists can participate to ensure these standards work for people who are blind or visually impaired as well as for the general public and for copyright holders. We note this observation is not theory. Examples of such practices are readily available today for users of open computing platforms, where strong, PGP, OpenSSL, or GNUPG encryption is no impediment to accessibility.
4. Security systems must not interfere with an individual's exercise of "fair use." Altering, formats, copying or repurposing copyrighted content to allow access with assistive technologies must remain a protection available to consumers with print disabilities.
5. Copyright law must prevent e-commerce technologies, transmission technologies, and display technologies from interfering with access to content through assistive technology or through alternative methods of accessing material.

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