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RE: Docket No. RM 2002-4
Exemption to Prohibition on Circumvention of
Copyright Protection Systems for Access Control
Technologies

Dear General Counsel:

On behalf of the Association of American Publishers (“AAP”), I am providing the following responses to the questions posed in your letter of June 5, 2003 as follow-up to my testimony at the May 1, 2003 hearing in the above-referenced proceeding:

Q1: How many eBooks are on the market that have the “read aloud” function disabled for which another audio source is not available on the market, e.g., audiobook?

A1: As noted in my hearing testimony, e-books constitute a growing, but still nascent, market for which accurate statistics of title availability – let alone title availability in terms of “read aloud” functionality and audiobook alternatives – are nowhere authoritatively compiled for the book publishing industry.

Industry statistics compiled by AAP focus on monthly net sales for a handful of reporting AAP members, which currently show market growth in terms of \$1.6 million in their net e-book sales for the first four months of 2003 as compared to \$600,000 in their net sales reported for the same period in 2002. Although it is reasonable to assume that such growth is at least partly attributable to a continuing growth in the number of titles made available by these publishers, rather than just to an increased number of sales of the same previously-available titles, this reporting process does not embrace the e-book output of all publishers and does not specifically document growth in available e-book titles, with or without enabled “read aloud” functionality.

Similarly, extant figures from other sources on title availability provide “ballpark” numbers and indicate year-to-year growth, but don’t provide any information regarding “read aloud” functionality. For example, a Special Report in the most recent edition of the *Bowker Annual Library and Book Trade Almanac*, entitled “Adventures with E-Books: 2001 in Review,” notes that titles available in each of the major e-book device formats (Adobe Acrobat eBook Reader,

Microsoft Reader, Gemstar REB 1100 and 1200, and PDAs using Pocket PC software) ranged from 3500 to 4500 in 2002. Meanwhile, the “Devices and Software” FAQ on the Open eBook Forum’s website currently indicates that there are now over 6000 e-book titles available for each of the Adobe Acrobat Reader, Palm and Microsoft Reader formats, over 5800 for the Gemstar 1100/1200 formats, over 5000 for the Mentoract Reader Format, and over 3400 for the eMonocle Reader format. It is unclear where these sources acquired their data.

Of course, any attempted quantitative analysis of title availability in e-book formats will have to take into account “Web-based e-books,” which are delivered to a consumer’s Web browser through a secure connection, and various online services that allow e-books to be downloaded by consumers for free. For example, the Special Report on e-books in the most recent edition of the *Bowker Annual Library and Book Trade Almanac* notes that, “[i]n terms of titles available and audience reached, Web-based e-books dwarf the other e-book market segments.” As illustration, the Report points to **NetLibrary**, with a collection of more than 40,000 titles, and **Questia**, with its service of 70,000 titles. In addition, consumers can go online to **Project Gutenberg**, with its collection of over 6,000 titles available for free downloading, and to the **Electronic Text Center**, the University of Virginia’s e-book library for the Microsoft Reader and Palm devices, which has over 1,800 e-book titles available for free downloading. But, here too, it is difficult to assess how many of these titles are available with “read aloud” capabilities.

When data responsive to this first question was sought by AAP from several of the nation’s leading trade and professional book publishers, the information received showed varying practices that indicate this issue is being handled in a still-experimental but competitive manner. All responding publishers requested non-attribution for proprietary reasons.

One such publisher, which indicated that its own default setting for Adobe Reader at this time is “read aloud off,” stated that it currently has about 1650 e-book titles available and that about 25% of those titles are also available for purchase as an audiobook.

However, two other major publishers responded that they had 1100 and 400 of their titles, respectively, currently available as e-books that are all “read aloud enabled.” These publishers did not provide information indicating what percentage of those titles are also available as audiobooks.

Another major publisher did not provide specific data regarding e-book title availability, but noted that a survey of its recently-published e-books indicated that roughly one-half of them are available as audiobooks. This publisher stated that it generally disables the “read aloud” function for its e-books, with the exception of those formatted for the desktop version of the Palm Reader, which integrates with JAWS, a high-end screen reader for persons with vision disabilities that has its own internal software speech synthesizer and also outputs to refreshable Braille displays.

Still another major publisher did not provide specific data regarding e-book title availability, but indicated that its current default setting is “read aloud off” for e-books in the Adobe Reader format. However, this publisher recently provided a graphic illustration of the continuing competitive experimentation and innovation that is taking place in the e-book market on matters of functionality when it announced the release of the latest novel by one of its best-selling authors as an “audio e-book” in conjunction with release of the work in standard print, audio and e-book formats. The publisher noted that this new format would permit readers to display the text

of the book on a computer screen, fully synchronized with the audio of a professional narrator, or to switch back and forth between the text and audio.

Of course, audiobooks are not the only alternative accessible formats in which the titles from these and other publishers are available to readers with print disabilities. Many of the titles published in e-book formats that do not have “read aloud” functionality are also published, or otherwise obtainable through conversion processes, in Braille.

Although this small sampling obviously cannot show the full extent to which e-book titles are currently available with on or off “read aloud” functionality, or available as an audiobook when the e-book version of the same title is “read aloud” disabled, it does support AAP’s contention that book publishers in the still-nascent e-book market are engaging in diverse practices regarding “read aloud” functionality, and are doing so in competitive and experimental ways that should be permitted to evolve without unwarranted or, at minimum, premature government intervention in the form of anticircumvention exemptions proposed in this proceeding.

Q2: What is the default setting on the Adobe Reader – read aloud on or read aloud off?

A2: It is our understanding that the “default setting” is not really in the Adobe Reader, but is in the content server, where the content use settings to be performed by the Reader are indicated through a series of “check boxes” according to the preferences of the publisher of the work to be presented in this format. Within this arrangement, it is our understanding that the “check box” for “read aloud” functionality is unset in the content server and must be affirmatively “checked” in order for this function to be enabled as “read aloud on.”

Q3: What percentage of all eBook titles offer no read aloud function? What percentage of those that do not offer the read aloud function are available in another accessible format such as talking books?

A3: See the answer to Question 1. We do not have responsive data sufficient to provide an answer to these questions. However, it should be noted that publishers typically do publish the same title in several different formats – often simultaneously – and that while some of the e-book-reading software does not incorporate the functionality of text-to-speech, some of it does. This situation makes meaningful statistics in response to this question problematic. It should be further noted that the reason for multiple-format publication relates again to the nascent nature of the e-book market: the software for displaying e-books varies in functionality from vendor to vendor, and the demand for that software varies. Faced with this market uncertainty, publishers have engaged in deliberate experimentation with multiple formats to determine users' preferences for one type of software over another. Thus, e-books in one format, whose software reader may not have a read-aloud function, are also provided in another format whose software reader does have that capability.

Q4: Is Bookshare an option for any published book that would serve accessibility needs?

A4: Under the “Chafee Amendment” (17 U.S.C. Section 121), which is the requisite legal basis in federal copyright law for Bookshare’s reproduction and distribution of certain copyrighted works without the permission of the copyright owner, it is not an infringement of

copyright for Bookshare to reproduce or distribute copies of “a previously published, nondramatic literary work” in specialized formats exclusively for use by blind or other persons with disabilities. The exclusion of *dramatic* literary works and certain testing and examination materials from the scope of this exemption appears to be the only explicit statutory limitation affecting Bookshare’s ability to provide “any published book” in specified accessible formats.

As a practical matter, Bookshare’s ability to provide “any published book” is also limited by its core operational premise of sharing scanned books. In effect, the scope and content of Bookshare’s offerings are generally determined by what books its subscribers and volunteers actually scan and submit for its collection. Subscribers and volunteers are prohibited by contractual agreement with Bookshare from scanning and submitting certain types of published works, including teachers’ editions of textbooks and materials that are already in digital form as issued by the original publisher, such as commercially available e-books or accessible digital book files received by schools directly from publishers.

Notwithstanding these limitations, just sixteen months after the launch of its Web site, Bookshare states that it is making some 13,232 books available for downloading by qualified subscribers. It is our understanding that Bookshare expects to continue to add hundreds of new books to its collection every month.

Bookshare’s collection can be downloaded by qualified subscribers in a variety of accessible formats, including the DAISY digital talking book standard (which permits a “read aloud” function when delivered to the user’s personal computer and used with specialized software) and the standard BRF Grade II digital Braille format (which can be used to produce hard copy Braille, read with a refreshable Braille display, or translated to standard computer text for use with a speech device), as well as in HTML and ASCII formats (e.g., for public domain texts).

Please contact me by phone (202/220-4544) or e-mail (adler@publishers.org) if you have any questions about these responses or need any additional information.

Sincerely,

Allan Adler
Vice President for Legal and Governmental Affairs
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