

## Short Comment Regarding a Proposed Exemption Under 17 U.S.C. 1201

*Submitted by:*

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### **Item 1. Commenter Information**

iFixit is an international, open-source, online repair manual for everything. Our mission is to provide people with the knowledge to make their things work for as long as possible. Because we believe that repair saves money, fosters independence, and protects the planet. The iFixit is global community of makers, hardware hackers, fixers, tinkerers, and repair professionals.

In 2014, the iFixit community taught repair to over 40 million people from almost every country in the world. Since this platform is strongly collaborative, there are over 10,000 crowd-sourced repair guides. This massive, free resource has helped people fix everything from mobile phones to game consoles, toys to musical instruments. iFixit also stands firm in its support of the tinkerers and independent repair professionals in our community. We believe that owners should have the right to repair, modify, and hack the things that they own.

### **Item 2. Proposed Class**

Proposed Class 9: Literary works distributed electronically – assistive technologies

### **Item 3. Statement**

We propose an exemption to allow circumvention of access controls on lawfully made and acquired literary works distributed electronically

for purposes of accessibility for persons who are print disabled or visually disabled.

As it stands, DRM on legally purchased ebooks blocks the ability of owners to access the book through text-to-speech programs—many of which come preinstalled on e-readers. TTS programs, which convert the words on a screen into a synthesized voice, are especially crucial to blind readers. Without those programs, the blind have limited access to literary works, academic textbooks, magazines, technical material, and other materials. We request that the existing exemption be extended so that readers with visual impairments can continue to strip DRM from a book to access that book through a TTS program—in the event that TTS has not been enabled by the publishing company.

There's no Library of Alexandria out there for visually-impaired readers. Only 1% of published books are available in braille. Yes, audiobooks are widely available through online platforms like Audible, but—as Blake Reid, head of the Technology Law & Policy Clinic, points out—the selection is relatively narrow. Audible boasts more than 150,000 titles, but that's only 4% of the estimated 3.4 million books that are available through Amazon. Independent authors, minor novelist, technical materials, and academic textbooks are under-represented on audiobook forums like Audible.

That's why ebooks and e-readers are especially promising for people with disabilities. There are well over a million ebooks in the Kindle's Store alone—everything from cookbooks to magazines to how-to books. TTS reads those purchased ebook aloud—and that's been an incredible tool for making the collective digital library more accessible, and more inclusive.

When the Kindle 2 was released in 2009, it came with TTS functions that could be used across all Kindle ebooks. Publishers and authors balked. They argued that TTS would negatively impact the audiobook market, and that a computer reading an ebook aloud constituted a violation of copyright.

In 2009, Amazon bowed publishers and gave them the option to opt out of TTS. Publishers quickly removed the feature from a huge

swath of books. They used digital rights management (DRM)—a technological protection measure used by producers, publishers, and vendors to embed limit what users can do with electronic files—to prevent the books from being read through TTS.

DRM, according to the American Library Association, is “designed both to enable access and use of digital materials and to restrict copying, sharing, reformatting or otherwise changing electronic media. These restrictions can range from ‘active’ DRM, which marries ebooks to a brand of ereader to more ‘passive’ DRM, like watermarking a digital file with the purchaser’s name and email address.”

That’s not to say that locks can’t be picked. Over the years, the print-impaired have found viable workarounds—hacks to pry open the doors to their digital library.

If a tablet doesn’t have a text-to-speech feature, users can modify it. Root the tablet and install a TTS app not sanctioned by the manufacturer. Of course, that is also prohibited under section 1201 of the DMCA. More commonly, though, people just strip the DRM off ebooks they buy. Then, the ebook can be uploaded to and read through an e-reader’s existing TTS feature.

There are already many DRM-stripping tools available online that can be integrated with existing TTS programs, like Calibre. The application itself doesn’t strip DRM, but a third party plugin will remove the DRM when new ebooks are uploaded through the application.

Congress has repeatedly protected the right of the blind, the visually impaired and the print disabled when it comes to accessibility concerns related to literary works. Specifically, the Americans with Disabilities Act recognizes that “physical and mental disabilities in no way diminish a person's right to fully participate in all aspects of society, but that people with physical or mental disabilities are frequently precluded from doing so because of prejudice, antiquated attitudes, or the failure to remove societal and institutional barriers.” Visual-impairments, including blindness, clearly fit under the ADA’s definition of a disability, which is defined as “a physical or mental

impairment that substantially limits one or more major life activities of such individual,” including the act of reading.

Further, Congress has repeatedly declared that copies of literary works made for the purpose of accessibility by the blind or the visually impaired falls under the auspices of fair use. In fact, the Copyright Act of the 1976 expressly mentions “oral reading (talking books)” for the special use of blind people under the heading of “fair use”:

“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, 94th Cong., 2d Sess. (1976).”

The Chaffee amendment further authorized entities to reproduce copyrighted materials and convert these materials to accessible formats for the use by people with visual impairments. The amendment states:

“[...]it is not an infringement of copyright for an authorized entity to reproduce or to distribute copies or phonorecords of a previously published, nondramatic literary work if such copies or phonorecords are reproduced or distributed in specialized formats exclusively for use by blind or other persons with disabilities.”

Features like TTS are absolutely vital to blind readers, like high school student Chris Nusbaum. In late 2012, a 14-year-old Chris Nusbaum’s made a personal appeal to Amazon—maker of the most widely-used e-reader in the world.

“My class has just been assigned a project for which we must use information in the class’s textbook. Every student has a Kindle, which has the textbook loaded on to it. All of the sighted students can easily read the material and complete the assignment independently,” Nusbaum read. “I, on the other hand, cannot read the book without the assistance of a sighted reader. ... All of this because of a problem which can easily and inexpensively be solved by integrating text-to-speech software into your readers and making sure that your apps and information are accessible with that software.”

The problem isn't just that developers aren't working on accessibility apps or that e-readers don't come with text-to-speech software, it's also that copyright law under Section 1201 penalizes both the blind and developers. The visually-impaired have been locked in an excruciatingly slow and circuitous battle against US copyright laws. And it's left the visually-impaired with few options but to hack their way around digital barriers—just for the simple pleasure of reading a book.

“Blind people, when we ask for accessibility, we're not doing it because we want anyone's charity,” Chris told us. “We want equal access to the same information that anyone else could have access to. We have the mental capacity to compete on equal terms in education and in the workforce and in any other areas of life with our sighted counterparts. In order to do that, we are just asking for a very simple request from developers and engineers and institutions of higher education: and that is make sure that we have access to information that we need. We'll take care of the rest.”

The situation has improved since Chris made his appeal to Amazon two years ago. TTS features have gotten more prevalent—but there are still critical accessibility gaps that need filling.

“Among the three main ebook distributors—Apple, Amazon, and Barnes and Noble, text-to-speech support is limited. While Apple's iPad has built-in text-to-speech functionality that works well with most formats of ebooks, including Apple's own iBooks format, most Kindle devices do not,” Reid's team of accessibility experts explained to us. “Only the Kindle Fire has text-to-speech functionality, which can be (and often is) blocked by individual ebook publishers using DRM.”

Every three years, advocates have to ask the Librarian of Congress to extend his previous exemptions. Which means that people with disabilities are, essentially, legally mandated to ask for permission to read a book. *Every three years*. Which is what they've done for more than a decade.

In a scathing criticism of the exemption review, Mark Richert of the American Foundation for the Blind said the "lengthy bureaucratic process" evoked shades of *Groundhog Day*. It's absurd, he said, that every three years advocates must again "argue and re-argue the rarely-disputed premise that making books and movies accessible to people with disabilities does not infringe or even remotely threaten the rights of copyright holders."

Copyright law, as it is currently being interpreted, means that developers are afraid of writing applications to help the blind. It means that consumers are afraid of tinkering with their tablets. And it means people with visual impairments, like Chris, don't know if they'll be able to keep listening to some of their books.

"For me, if I could describe Text-to-Speech in one word, it would be liberating," said Chris, now 16 and a junior in high school. "It's a kind of freedom. I, as a blind person, don't have access always to most kinds of information that sighted people have access to. It's a kind of freedom when I know that I have access to that information."

Reading is a basic human right, and no one should have the power to take that away.