

## **Blue Spike, Inc.**

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The Librarian of Congress  
The Library of Congress  
Washington, D.C. 20540

Dear Mr. Billington:

I am the founder and president of Blue Spike, Inc. We are the inventors of secure “digital watermarking” and “trusted transactions” technologies. Our technologies have invaluable applications in remedying concerns on the part of copyright owners. More particularly, our significant technical contributions will enable proper and fair compensation for digital copies of copyrighted works.

We write to share our perspective on implementation of access restrictions under the Digital Millennium Copyright Act (DMCA). As the legislative history of the statute makes clear, Congress felt strongly about the need to establish a mechanism that would ensure that libraries, universities, and consumers would continue to be able to exercise the fair use rights that have ensured access to works in the past. Members of the Commerce Committee, who were responsible for drafting the provision, made it clear that this provision was to be interpreted to allow individuals and institutions the greatest access to the greatest number of works, so that they would be able to continue exercising their traditional fair use and other rights to information. Committee Members recognized the increasingly important role that new communications devices will have in delivering information to consumers and the means that increasingly would become available to establish trusted transactions. Digital watermarking is one such advanced technology.

Without accessible markets, there are no valuable copyrights. When Thomas Jefferson said, “information wants to be free,” he meant freely accessible. To the extent that intellectual property—an intangible asset for which both the creator and user can benefit—can be properly, securely “tagged”, efforts at restricting access are at odds with simple market mechanisms. Freely accessible radio sells compact discs; freely accessible television trailers sell movies.

“Recognition” is the asset which is in high demand, not predeterminations of classes of copyrighted works. Recognition has replaced location as the central means for which property needs to be valued. Once information has been digitized, it is inherently easy to copy and replicate. The benefit to creators of such content has been a vast increase in revenues and the explosion of competitive entertainment “products”. To attempt to define use in terms of “access control” begs the question of what rights consumers have in the sale and exchange of copyrighted works. Simply, do consumers have any rights over copyrighted works they purchase?

While Blue Spike is completely against any form of piracy, the value of any given copyrighted work can only be determined if the work exists in some freely accessible form. This is the standard by which the copyrighted work is judged, prior to efforts to restrict or otherwise deny access to the work. To assume that purveyors of copyrighted works know what is best, in terms of access control, begs the related question—by what common standard, the business or the consumer?

We have developed and successfully deployed our secure trusted transaction technology in an effort to enable copyright holders to “establish responsibility for digital copies of copyrighted works” where before there was none. This single powerful ability addresses, head on, the “digital copy problem”—piracy. To the extent that differentiations between perfect digital copies can now be

provably accomplished, restrictive interpretation of the DMCA may represent an impediment to furthering creative output that would otherwise result in benefits to American society's arts and sciences. Provable identification and authentication of any given copy of a copyrighted work is as important to our country's future as a haven for intellectual property as the importance of clear and transparent title to any other asset in a free market economy.

We hope we can be given time to demonstrate further our invaluable contributions to this serious problem. We further hope that more accurate information can be disseminated by researchers such as Blue Spike who have been active in providing solutions to the concerns of copyright holders worldwide.

Sincerely,  
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