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Shame on You, Authors Guild

The facts don't match the claims in the Kindle TTS debate

In my previous column I wrote about the Authors Guild's stance against text-to-speech-enabled e-books ("Shame on You, Amazon," January/February 2010). Continuing the discussion, the Authors Guild also contends that using TTS on Amazon's Kindle is a copyright violation.

Copyright law was created to promote creativity and reward writers for their work. This law, which has evolved since the 1700s, states, in part, that an author has the exclusive right to reproduce and distribute his work, to perform his work publicly (including digital audio transmission), and to prepare derivative works. The guild's position is that TTS infringes on these rights, resulting in a copyright violation.

"It's not the reading of the text that creates the infringement," counters Rod S. Berman, a Los Angeles intellectual property attorney. "The TTS must actually make a copy of the words."

For a violation to occur, the infringement must both be fixed in a tangible medium and remain fixed for more than a transitory amount of time. One court recently held that "buffer data is not a 'copy' of the original work whose data is buffered."

With TTS on Kindle, it is more likely that the software processes a word or sentence, dumps it from the buffer, and then starts processing the next words. "There is no reason for the software to keep text or speech data for any duration after the speech event," says Barry Romich, engineer and chief operating officer at the AAC Institute, an organization for people who rely on augmentative and alternative communication. Romich adds that the data is probably in RAM for fractions of a second, which would negate a finding of infringement.

Derivative Work Defined

A derivative work is one based on a copyrighted work, such as a play or movie adapted from a novel. A public performance occurs when the work is performed at a place open to the public or where a substantial number of people are gathered. Because public performances include digital audio transmission, the guild would like consumers to believe that any aural presentation is a public performance, even though this is not consistent with the law.

If a theater company performs a play adapted from a novel (a derivative work), it sells tickets (a public performance) and pays the playwright a royalty. But what if I go to the play with a friend who happens to be deaf and blind? If I sign into her hand so she can enjoy the play in a different format, then is that a derivative work? A public performance?

Like signing, "TTS is simply another way of presenting the same material that's available to all other consumers," says Chris Danielsen, director of public relations at the National Federation of the Blind.

If the guild is so concerned about giving away for free an additional method to access e-books, then should publishers give a discount to print-disabled consumers for the written text they cannot use?

For argument's sake, let's assume a copyright violation existed. Article 30 of the U.N. Convention on the Rights of Persons with Disabilities, signed by the United States in July, mandates that parties shall ensure "laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials." Refusing access to TTS-enabled e-books appears to violate Article 30.

"Just as people with disabilities don't pay to use parking meters, they should be able to use text-to-speech on Kindle without paying extra for the technology," says author Dylan Landis, who advocates for improving all types of access for people with disabilities.

The guild believes the Chafee Amendment—an exception to copyright law that allows alternative formats of text to be created for people who are blind, deaf, or have other disabilities—is the answer. Verbiage in Chafee, however, suggests this exception would not apply. Further, according to Danielson, most of the nearly 30 million Americans with print disabilities do not qualify under Chafee.

As TTS continues to improve in sophistication, the struggle over copyright will likely escalate. Many, including Berman, believe this is an issue Congress will ultimately have to resolve.

Until then, instead of exploiting TTS as a gateway technology to welcome tens of millions of new customers, the Authors Guild and publishers have chosen to pursue a billing opportunity—in the process denying people with disabilities the benefits of reading. Time will tell if this rights grab will improve the bottom line of the publishing industry or backfire by alienating Kindle owners, some of whom have been so offended by the disabling of TTS they have declined to purchase e-books that have had the technology disabled. (*Author's note: Amazon, the Authors Guild, and Random House declined to comment for this column.*) ☒

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