Linda Appleget

Comment contains three classes

1. **Class of work: Compatibility software or hardware**
2. **Class of work: Education**
3. **Class of work: Message Boards and other means of electronic public discussion**

1. **Class of work: Compatibility software or hardware**

DeCSS is a software tool designed to break the Content Scramble System (CSS) used by the MPAA in an attempt to protect intellectual property and digital media. The DMCA was pivotal in the MPAAs lawsuits against several websites that hosted DeCSS or similar copyright circumvention tools, one just for linking to it.

It is well known and publicized in the tech community that the encryption system used in CSS is infantile as a software solution for protecting DVDs and that eliminating this protection is necessary in order to access the digital content on certain systems, specifically Linux based computing. That an entire class of computing technology be prevented from accessing certain types of digital media is incomprehensible, especially when its client base continues to increase steadily, bypassing both Mac and Novell on the server side, and can now be found easily in stores like Walmart. There is no logical explanation for this application of the law.

It is not against the law to write a virus, only to use one intentionally to cause harm. Just as it is not against the law to build a gun, but it is against the law to use one to cause harm. Thus, software utilities such as DeCSS that allow access to digital content should be treated comparably.

Just as virus protection companies must strengthen and improve their software product after each new virus is introduced, and operating system manufacturers and other software companies must develop a more secure system for each security hole found, then so must any corporation, especially so the entertainment industry, who wish to develop solid technical applications in this digital age. They cannot be exempted from the forceful nature of making a better product.

It is quite common for network and security personnel to purchase books called "Hackers Guides" that may even include a CD full of various virus or hacker utilities in order to gain a better understanding of how a hacker breaks in, and thus learn how to tighten up their own networks. How can it be that a simple software tool such as DeCSS is not only illegal, but it is illegal to talk about it, to write about it, to display its code, or to even link to anything about it from a website? And it is not because the writer of DeCSS is claiming copyright, it is because the music and movie industry

claims this utility infringes on their digital content?

This make-it, break-it, and make-it again process is simply inherent to the development of better software and hardware. Every single technological evolution that we have experienced in the last decade alone can find its humble beginnings in some earlier discovery; whether it is software, protocol, hardware or written word. Indeed, most patents are based on existing 'prior art' and are awarded for building a better mousetrap.

The DMCA fails miserably when technical experts, software engineers, scientists or the student on their way to becoming the next encryption expert, are not allowed to dissect, discover and expand upon the potential of some new (or possibly old) element of technology. Especially when traditional copyrights and the patent process already exist to protect the actual inventor or original product. Can we even imagine a world if a company such as IBM were able to use something like the DMCA to prevent the creation IBM cloned PCs?

Reference any news or case study on 2600, the current case against ElmcomSoft and Dmitry Sklyarov, remanded to our country for over six months (and eventually acquitted), and the ongoing US/Norwegian case against Jon Johansen for writing DeCSS (not for using it to pirate copyrighted material – for only writing it and posting it on a website – there must be a clear distinction here)

Summary
In summary, to prevent development and fair uses of any portion of software such as DeCSS, or hardware components that facilitate compatibility between dissimilar software or hardware systems because they appear to, or have the potential to, 'infringe' on one corporate entity, basically brings future developments to a stand still and strips the public of their fair use. A poor product should not be forced upon the public with little hope of change in sight because it is illegal to improve upon its humble beginnings. Since the DMCA silenced the masses in regards to creating and then breaking copyright protection devices the world may never know what could have been.

2.   **Class of work: Education**

The freedom to speak publicly, provide personal opinion, the freedom to teach encryption/decryption and other advanced programming elements without prosecution.

The bar is constantly rising in technology. After successful dissection there comes discussion – the sharing of knowledge. Yet the DMCA stifles this too. In a world full of curious and inventive educators and learners, we pass on what we know so that others may benefit from this knowledge and learn to raise the bar yet again. That is the

way it has always been, especially in science and technology, and will continue to be for there is not one single human being on this earth that can successfully predict when technological growth will stop because it has finally grown up. Yet repeatedly we see the DMCA being used to silence web sites and message boards simply for posting the text of programming code, or discussing how to either write code from scratch, or dissect existing code in order to produce a more functional product.

Summary

Today, in the year 2002, we may be able to define what an "unlawful copyright circumvention device" is, using today's standards and our infantile and naïve knowledge of what they are. How will it be defined just ten years from now, or twenty? If the DMCA is not corrected or eliminated, the definition will be exactly the same. There are things in our future *that we haven't even imagined yet*. The only way to ensure future technological developments is to protect essential education concerned with understanding and sharing knowledge of today's 'copyright and/or copyright circumvention devices.'

3. **Class of work**: **Message Boards and other means of electronic public communication**

Recently several large retailers used the DMCA as leverage to have discussion threads removed from message boards. These threads contained information posted by anonymous public persons who listed items that would be for sale on the Friday after Thanksgiving.

Reference Fatwallet discussion:
http://www.fatwallet.com/forums/messageview.cfm?catid=18&threadid=129657

Summary

In summary a message board made available for public posting and comment cannot be considered a 'circumvention device' and thus must be specifically excluded. To not exclude message boards leaves the door open for further abuses of this law. It matters not if the law was used inappropriately in this instance. The DMCA Safe Harbor provision forces an ISP to remove suspected infringing material or forfeit their own safe harbor. So once again the DMCA has silenced the web, and forced the innocents to secure the funds in order to defend themselves.

Reference also a very recent example of an entire web site being forced down:
http://theyesmen.org/dow/Dow-Chemical_DMCAnotice.pdf

General summary

The struggle between the entertainment industry and their digital future is demanding and complex. This past year they attempted to deliver CD products with a new encryption system that was overcome by simply drawing along the edge with black magic marker. Although it was impressive that they would finally try to improve their means of digital protection, it is apparent that much research and development must occur before a reasonable answer can be found. We only know that the answer has yet to be realized. Until such time fair use in education, electronic means of communication, and the ability to develop compatibility between dissimilar systems must be protected.

I am a twenty+ year technology professional who has worn many hats in my career. I do not download music but believe P2P and Napster were an amazing breakthrough in computing technology.   I currently do not run Linux at home (although I plan to in the future) and truly feel for the entertainment industry in their battle to find a solution to this mess. I believe the answer lies in solid research and development, social and ethical awareness, and public education. In the meantime I believe we cannot stomp out portions of our technological future and freedoms simply because they are now 'digital'.

Thank you for accepting these comments.

Linda Appleget