

## ***Comment on petition for exemption under the Digital Millennium Copyright Act by Static Control Components, Inc.***

The particular class of works proposed to be exempted under the DMCA consists of software designed to circumvent the printer cartridge validation software in printers for the purpose of interoperability of the cartridge software, and therefore the cartridge itself.

Application of the DMCA in the manner for which SCC is seeking an exemption does not meet the intent of Congress in passing the DMCA.

Congress explicitly allowed reverse engineering in the DMCA for the purpose of software interoperability by stating “a person may develop and employ technological means to circumvent a technological measure or to circumvent protection afforded by a technological measure, ... for the purpose of enabling interoperability of an independently created computer program with other programs ...”

The software in SCC’s toner cartridges serves only the purpose stated by Congress, which is interoperability. The software does not enable or promote any type of copyright infringement that the DMCA was enacted to cover. Only the narrow and purposeful interpretation of the DMCA by printer manufacturers produces the view that third-party toner cartridges are infringing.

It is easy to come to the conclusion that printer manufacturers designed their software systems specifically to maintain and strengthen their monopoly on printer cartridges by requiring that third-party cartridge manufacturers infringe on their copyright in order to maintain interoperability. Such action constitutes a gross misapplication of the intent of the DMCA.

The adverse effects of upholding such an interpretation are nothing less than the elimination of the entire long-standing industry of third-party printer cartridge manufacturing. The following effect of that elimination will be higher cartridge prices paid by consumers because they have no choice or price competition when purchasing printer cartridges.

In enacting the DMCA, Congress included several exceptions to copyright infringement to avoid what could have been a misapplication of the intent of the DMCA in areas that are normally considered fair use. In addition, understanding the possibility of unforeseen misapplications of the DMCA that could stifle technology and commerce, Congress wisely authorized the Copyright Office to make exceptions in those cases.

The Copyright Office should honor Congress’ intent and grant this exemption to the DMCA.

Sincerely,  
Franklin Fisher