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A Comment.

Librarian:

I seek to comment on questions 3, 4, 18, 21 and 22 posed in DOCID:fr24no99-23, "Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies" with regard specifically to the class of copyrighted works known as DVD (Digital Versatile Disk).

DVD's are a popular new format for the distribution and playback of motion pictures. The DVD format is controlled by a standards organization known as the DVD Consortium. To ensure and safeguard against unlawful duplication, the content has been encrypted; only a DVD player (a console unit or computer software) authorized by the DVD consortium is allowed access to a decryption key. This key is necessary for playback.

Computer software for the playback of DVDs is widespread and common for both Apple Macintosh computers and PC's running Microsoft Windows. However, there is currently no software for several other PC based operating systems: Linux, BSD, Solaris, OS/2, and several others, nor do any companies with a license from the DVD Consortium have any plans for creating such software. Thus, there is a significant population of computer users who cannot lawfully use DVD technology, namely those running Linux, BSD, Solaris, OS/2 or any other non-Microsoft Windows operating system.

It is my opinion that those who reverse engineer DVD encryption systems to ensure interoperability of DVD products on officially unsupported platforms should be exempt from the clauses in the DMCA prohibiting circumvention of access control technologies. I have in mind, of course, the authors of deCSS, software designed to defeat DVD encryption, and the LiViD project, a group working on creating a DVD player for Linux (which relies on deCSS, and is intended for legal viewing of properly acquired DVDs).

This leads into question number eighteen, twenty-one and twenty-two: with the widespread availability of deCSS, nearly anyone with a computer and some knowledge of computer programming may decode a DVD. To this point DVD encryption has been very weak; this of course facilitated its circumvention. Even if it had been strong, though, it would have been circumvented eventually: no security is perfect. Suppose, for example, that DVDs have been given newer, incredibly strong encryption technologies that ensured only licensed players could decrypt a DVD: it could still be circumvented by merely tapping the cable that connected a player to a television: this signal could be captured and recorded onto another format. Take also into account that most motion pictures are released onto VHS tapes: this format has no built in security at all, yet motion picture producers still use the format widely, because it is popular. Thus, even if copying DVDs becomes widespread, I dare opine that sales of motion pictures in any format will not be harmed.

Thus, I posit for your consideration, that access control technologies are in the end potentially harmful to consumers, as it can, under certain (and not uncommon) circumstances limit availability of copyrighted works to those who wish to lawfully obtain them, as evidenced by the problems with DVDs. Further, I posit that a lack of access control technology has not hurt copyright holders in the past: if illegal copying of VHS cassettes or CD audio disks had been widespread enough to cut deeply into their sales, entertainment companies would have dropped the format for something different: neither VHS nor CD format have been dropped, nor are there publicly available plans to do so in the foreseeable future. Therefore, I further argue that any circumvention of access control technology does not and cannot harm producers of copyrighted content; further, I conclude that the availability of access control circumvention is a boon to the consumer,

allowing for greater choice of formats and an insurance that any given format will be interoperable with any and all hardware and software that are capable of interoperating with said format.

Your humble citizen.
Don Goodman