

Sirs,

I am a professor of computer science who has research information property for several years, and am also involved in several software/internet companies.

The criminalization of unlocking copyright enforcement schemes must make a distinction between stable information properties which are permanently licensed, useable in multiple readers, and resellable on secondary markets, such as books and music and game-cartridges, and dynamically changing “upgradeable” software which is already licensed under severe limitations.

The tests to be drawn to exclude criminalization is:

- 1) Is an interface based monopoly (IBM) possible? (yes for software, no for entertainment)
- 2) Does the form provide UPGRADES (rather than sequels) ? (yes for utility s/w, no for entertainment)
- 3) Is the secondary market inhibited? (yes for oem licensed software and ebooks, no for physical copies)
- 4) Has the reader/player of the format been removed from the market?

An interface-based monopoly is a private owner of a published standard (a plug, a programming language) who has the right to unilaterally “tweak” that standard to defeat competitive offerings. Such monopolies can force the public to pay license fees for the same copyrighted material over and over again.

Thus the DMCA extra protection for movable physical media, such as DVD and CD and game cartridges and on electronically distributed content which was not subject to upgrade and which was resellable. It would be lifted when the “player” was retired, e.g. on copy-protected 5.25” disk software and atari 2600 cartridges. It would not be extended for utility software which expired or was obsolete and for which the seller was extracting a forced upgrade.

If any of these questions are affirmative, the criminalization of unlocking encryption will lead to “dispossessionism” where humanity will lose the ability to own copies of information properties. The library of congress, owner of many books, should be worried. More detailed discussions are in my hyperbook “License to Bill”: www.jordanpollack.com/softwaremarket.

Jordan Pollack
Pollack@cs.brandeis.edu