

This is a comment on the provision in the Digital Millennium Copyright Act (DMCA) that specifies that "No person shall circumvent a technological measure that effectively controls access to a work protected under this title."

I am writing this to express my belief that the Copyright Office and Librarian of Congress should determine that some classes of copyrighted works must indeed be exempt from the "prohibition on circumvention" described in the DMCA. The class of works should include all copyrighted material distributed in electronic form or on any media readable electronically.

As you know, copyrights exist to give the creator of a work a temporary monopoly over their work for some period of time. After which the work is placed into the public domain for all to use. The anti-circumvention in the DMCA will unlawfully restrict access to formally copyrighted material that had been locked by some form of access control. Any device that might be created to circumvent access controls of locked works, that are no longer under copyright control, could possibly be used to circumvent access controls on existing copyrighted material. Thus the creation of such a device would be prohibited by the DMCA. This would effectively extend copyright control beyond the expiration of the copyright.

When someone purchases a copy of a copyrighted work, such as a book, they have a great degree of freedom over what they can do with that item. e.g. they can read it, re-read it, sell it, give it away, loan it, and quote small portions with attribution. This is all within the spirit and law of the copyright laws. Under the DMCA, this is not necessarily possible. The publisher of the media has undue control over their customers.

The DMCA can (and has) prohibited many people from legally viewing legally obtained copyrighted material, that is locked via an access control mechanism, on certain devices. Such devices include many computer systems for which the publisher didn't care to provide a way to view the work. The copyright laws were created to give people a degree of control over their creative works, not to provide publishers with a means to hoard information.

As has been demonstrated in the current legal challenges involving DVDs, it is not necessary to bypass access controls in order to make unauthorized copies. Furthermore, as stated above, it may even be necessary for someone to bypass access controls to view something under Copyright Fair Use. Both of these situations can and have happened with the exact same access control method.

It is of course possible for someone to use a means of by-passing an access control mechanism to violate the Copyright laws. However, that certainly does not mean that all such uses of such technology should be unlawful. It is just as likely that someone could use a baseball bat to smash someone's window. That doesn't mean we should prohibit the manufacture of baseball bats.

The constitution and the laws of this country are suppose to guarantee our freedoms, not take them away.

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