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February 15, 2000

LIBRARY OF CONGRESS
Copyright Office
Washington D.C.
Via E-mail to 1201@loc.gov

Re: Docket No. RM 99-7A

Comments to the U.S. Copyright Office on the Adverse Impact on Noninfringing Uses from the 1201 Prohibition Against Circumvention of Access Control Technologies

I believe Title 17 Chapter 1201 radically shifts the balance of power between information producers and the public. Orwellian is the best word to describe this law. I hope it is completely overthrown on First Amendment grounds, but I realize that I am addressing the Copyright Office, not the Supreme Court. Accordingly I am offering a list of scenarios where 1201, and particularly 1201(a)(1), would undermine basic public rights to access and use information if this law comes into force without limitation.

The New Iron Curtain

Right now China has its own DVD zone. In the future, other repressive governments may insist that media players imported into their territory have a unique zone. Such governments may even demand that imported players only accept media that has a digital signature from a government censor. As new media device come to dominate information commerce, these governments will be able to totally control what movies, songs, political tracts, TV programs and news stories are available to their citizens. Any U.S. citizen who tried to create material that would bypass the censor would violate 1201(a)(1).

Acid Paper

CD manufacturers claim that CDs will last 100 years or more. Of course, no CD has been around any near that long. This 100 year claim is based on accelerated aging test, but such tests cannot account for unknown environmental factors or subtle chemical processes that could reduce the lifetimes. DVD have been around for even less time. Other media developed in the future may not even be designed to last that long. Currently copyright lasts for 90 years or more, and that duration may will be extended yet again (we have to protect Mickey Mouse, after all). Any library or collector that discovered its holding were

deteriorating could be barred by 1201(a)(1) from doing anything about it until it was much too late. While there are similar issues affecting paper documents, there is at least some technology to retard the deterioration of paper. Digital media is a complete unknown.

8-Track Tape

Some copyright material may be published on new media that ultimately fails in the market place. Libraries and other legitimate owners would have no way to play this material once obsolete players wore out. The original manufacturer might well be bankrupt. Other companies or organizations would be barred by 1201(a)(1) from designing compatible players. A library or other owner that attempted to transfer the information to another, playable medium, would also violate 1201(a)(1). This differs from any existing copyright situation in that here a library might own an intact copy of a work, but is barred from obtaining or creating a device to view that work. Present copyright law might prevent copying an 8-track tape onto a standard audio cassette, but it does not prevent a library from building an 8-track player.

Revisionism Institutionalized

In the past when an organization issued a public statement, it became part of the public record. In the future organizations can issue statements, advertisements, stock solicitations, etc. in the form of protected, time limited documents. If the statement proves to be embarrassing, inconvenient or otherwise problematical, they can simply erase it from their records or even alter it to eliminate the problem or to add exculpatory material. Anyone who kept a readable copy of the original that would catch their fraud, would violate 1201(a)(1).

No More John Harvards

Harvard University was named after John Harvard because he donated his library to the fledgling college. In the future scholarly material will be delivered to each professor in a format keyed to the professor's player or smart card. When he or she dies, no one will be able to access his or her lifetime of accumulated material per 1201(a)(1).

Giuliani's Fundraising Letter

An issue in the current New York Senate campaign is whether one candidate has espoused positions in his fundraising letters that differ from those he has stated in public. The public certainly has an interest in know about such behavior. In the future, politicians will deliver fund raising material using time limited, copyright protected media. An opposing candidate that attempts to introduce copies into the public debate would violate 1201(a)(1).

The End of the Paper Trail

Already companies are programming internal e-mail systems to erase e-mail from archives after a few months. In the future, companies will distribute internal memos in a

time limited electronic format that can only be played on company computers. The software that plays these memos will not permit them to be saved in a neutral format. Any employee who tries to do so will violate 1201(a)(1). This will effectively eliminate the paper trail that is used to prosecute white-collar crime and end whistle blowing as we know it.

There are other scenarios I could come up with: poison pen letters, blackmail, extortion, spouse abuse, etc. I fear we will discover other, more insidious, unintended consequences of this selfish law.

Respectfully submitted,

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