

Comment by Dale Pontius  
Regarding Docket No. RM 99-7A

Exemption to Prohibition on Circumvention of Copyright  
Protection Systems for Access Control Technologies

I am concerned with two specific aspects of the "technological measures" used to control access to the Digital Video Disk.

The first aspect is the access control, itself. If a DVD is purchased for home use in conjunction with a currently marketed DVD playback device, there are no limits to its viewing. It is not currently regarded as a "pay per view" device. Nor does the access control prevent unauthorized copying. A "bit-level" copy can be made without subverting the access control, and that copy will play on current viewers just like the original.

For a moment, consider the purchase of a book. I do not expect to legally copy a book. But I do expect to be able to read it at my leisure, without buying a certain "approved" kind of reading light. Copyright law traces its heritage to the book, and for a product bought with book-like expectations, I would anticipate having book-like rights. Yet in the case of the DVD, I apparently do not.

I understand that the access control is placed on DVDs to allow the motion picture industry to control the worldwide distribution of theatrical and DVD releases, in order to maximize profits. But in this case, their desire for profits conflicts with my fair use of their product. Furthermore, there are other technological means to their end besides restricting my viewing rights. In any event, their access control was apparently easy enough for a European teenager to circumvent, so I would not expect it to be effective against any anticipated black market.

It is also worth mentioning that the existing access control provides most of the infrastructure necessary to deliver "pay per view" on DVDs. In fact, all that is needed for "pay per view" DVDs is a download mechanism and a programmable key capability in the player. Both of these are trivial for anticipated "digital TV" or "internet appliances". The marketplace has already rejected "pay per view" DVDs in the form of DIVX, yet we find that doing the same with a DVD has become a trivial exercise. Except in this case, we have no alternative - no way to vote with our wallets.

I bring up these issues specifically, because according to the Congressional Record, the framers of the Digital Millennium Copyright Act had no intention that the access control that they were protecting would either be a stepping-stone to "pay per view" or suppress fair use. In fact, they were deliberately trying to avoid that possibility.

The second aspect I'd like to bring up is the "protected section" of each DVD. It is impossible to use the fast-forward button to bypass this section, enforced by logic in the currently marketed DVD players. While this was originally stated as being for license display, like the well-known FBI warning on video tapes, there have been cases of studios using this protected section for commercials that cannot be skipped.

To me, being conservation-minded, advocating consumerism is politically revolting. The possibility of political content of a more general nature cannot be disregarded, either. At theaters, where we once saw previews and snack bar ads, we now also get Jimmy Fund pitches, and anti-drug messages. While I won't speak out against those additions, they open the door to others, and set a precedent.

Clearly, the MPAA has the right to air their political views. I have a bit of a problem when they begin taking advantage of a captive audience to do so. I also have a problem in that they hold a monopoly on the access control, and the use of the "protected section" of the DVD. Other parties will in the future be able to master their own DVDs, but they will have neither access control nor use of the "protected section" of the DVD. Their political rights will thereby be inferior to those of the MPAA. There has been no evidence yet of the MPAA exercising editorial rights on either DVD mastering or the use of the "protected section". Yet the DVD industry is in its infancy, and the necessary mechanisms are all in place, and the possibility for abuse is real.

I suspect the framers of the DMCA did not plan for one group's political rights to be enhanced above another's, either.