

A comment on Section 1201(a)(1) of The Digital Millennium Copyright Act

In considering the basic concepts behind copyright law, the spirit of the law is a crucial basis.

What is effected in the act of purchasing a book, a video tape or a DVD? One can clearly assume that this act alone, which is without explicit license, is a license to fair use of all the material one acquired. Fair use is implicitly granted in any such transaction. Common sense dictates that such granting of fair use is a right correctly assumed by the purchaser.

Pursuant to the previous establishment of the spirit of copyright law, one should consider the following. Is it in the spirit of fair use or against it to have a law which prevents the effort of an individual, having purchased a copyrighted work, to read, listen to or view said work? If one believes in fair use, the answer can only be that it negates fair use.

As a method of gaining a better understanding of this issue, one can consider an example. Imagine that one buys a book French and, not speaking French, one endeavors to learn French so as to experience the copyrighted work in it's original form. This is fair use, is it not. It is also fair use to have someone read the book to you.

Restricting the ability of the purchaser to experience the material in the manner which they choose is restricting their fair use, the basis of copyright law. This conclusion is clear from a correct understanding of the spirit of the law. The fact that digital media lend themselves to indistinguishable copying does not negate the fair use rights of the purchaser. If such purchaser is willing to make efforts to view the work in a manner which may not have been anticipated, this is clearly not beyond the bounds of fair use. In the case of a DVD, the techniques of both the individual trying to view his or her purchased movie on a system of his or her choice and the individual redistributing (for profit or not) copies of the same movie may well be similar. The intent, however, is clearly not the same. One is fair use, the other is illegal.

Respectfully submitted,

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