

Matthew McKeon  
templar@catholic.org

The orthodox application of Section 1201 of the Digital Millennium Copyright Act would circumvent precedent in US law regarding fair use, both in regard to duplication and presentation.

If I, as a consumer, purchase a work in a particular media, prior decisions guarantee me the right to duplicate that work or copy it into another form of media, as long as such duplication is intended for personal use and I apply diligence in protecting copies from acquisition by unauthorized parties. In order to exercise this right with works that are provided only in encrypted media formats, it is necessary to circumvent such control measures either directly (through digital manipulation) or indirectly (through analog recording).

Prior decisions also affirm my right to present the works that I have purchased in a manner of my own choosing, as long as it is for personal use. Oftentimes, the control measures on media formats restrict that format to a handful of presentation vehicles. For example, the encryption on digital video discs (DVDs) prevents their presentation on any device other than a licensed DVD player or a licensed DVD-ROM drive with the accompanying proprietary software. If the controllers of the DVD standard have not explicitly approved my computing platform of choice, I am unable to view the DVD I have purchased without switching computing platforms or circumventing DVD control measures. Even if my presentation vehicle is fully recognized and licensed, I am unable to view a DVD purchased in another country due to regional code restrictions without violating Section 1201. Section 1201 implicitly repeals the right of the consumer to present legally acquired works in a manner of his or her choosing for personal use.

It may be argued that I, as a consumer, may simply refuse to purchase works in the form of encrypted media. However, I submit that the vast majority of works are distributed by a handful of commercial entities, who invariably collaborate on media standards. These entities have and will continue to champion the production of digital media exclusively in an encrypted, tightly controlled format. Therefore, my choices as a consumer are severely limited with regard to encrypted vs. un-encrypted media, such that I cannot effectively exercise my "vote of purchase".

Section 1201 of the DMCA, if applied in an orthodox manner, will negatively impact consumer rights in America. It allows copyright holders to control not just the content of their works, but the form in which they are distributed. The monopolistic implications of this are clear -- DMCA Section 1201 is a provision intended not just to protect

the intellectual property of copyright holders, but to also force consumers to accept their place at the bottom of a vertically integrated chain of distribution, with as little freedom of choice as possible.