Paul Wayper
Fractal Design Studios,
52 Hillsdon Road,
Taringa, 4068,
Brisbane, Queensland, Australia
email: paulway@earthling.net

David O. Carson
General Counsel
Copyright GC&R
P.O. Box 70400
Southwest Station, 20024
Washington, DC, United States of America

Dear Mr. Carson,

Firstly, may I take this opportunity to thank you and the Copyright Office for allowing comments on the proposed Digital Millenium Copyright Act (DMCA) via email. As I'm sure you'll agree, this gives the end-users of the copyright system a valuable chance to add their own views and information into the inquiry process. Thank you also for extending the deadline for reply comments, of which I am personally taking advantage.

I would like to respond to the submission to your Notice of Inquiry (NOI) made by the Motion Picture Association of America (MPAA). As they boldly state, the MPAA is a trade associtions representing seven of the largest U.S. producers and distributors of motion picture entertainment. As such, it is worth noting that they are not involved in the actual creation of output; rather, they are involved in taking the creation, packaging it into distributable formats and selling it.

The copyright laws exist, primarily, to defend the creators of that large domain called 'intellectual property' - in other words, the people that come up with the ideas and the people that write or perform them. They defend that intellectual property against those who would stand to profit from distributing the property without the author or performer also benefiting - the people who copy the books, reperform the music and plays and show the films without paying the authors or performers for the use of their work.

Long in the history of copyright is the acknowledgement that not all use can be paid for. Researchers quote books, students watch seminal films, reviewers critique performances, comedians satirise; there are many ways

that the copyright laws allow use of the copyrighted material without requiring payment to the author. Interestingly, some of these uses are ways the original copyright holder never envisioned - a movie may be watched, frame by frame, to discern subtle features of production. Another respondent mentioned the idea that Pink Floyd's "Dark Side of the Moon" can be played to the film "The Wizard of Oz"; this is surely a use the original creators of both might never have envisioned.

To the MPAA's submission.

One thing that is predominately obvious in the MPAA's submission is that it is quite confident of its own position. For example, it makes large and sweeping statements, such as:

"...the use of technological measures in general, and of access control technologies in particular, has already greatly increased the availability of a wide range of copyrighted materials to members of the public."

Not only does this statement provide no evidence to back up its assertions, but the parts of the statement are individually cause for doubt. What are "a wide range of copyrighted materials"? Which "members of the public" have been receiving them? How much has the availability increased as a result of the use of these technologies? Has this increase in availability actually resulted in any extra usage?

Examples of these unproven assertions are everywhere in their document. "We will postpone any discussion ... until we can examine any evidence ... that ... demonstrates a likelihood that [the DMCA] will adversely affect the users of any copyrighted works in their ability to make lawful uses of those works". One wonders why they can't think of a few reasons themselves, to provide basis for the rest of their assertions. "We believe this impact [of access control technologies on availability] is likely to be overwhelmingly positive." Again, one wonders where the evidence that makes them believe this statement actually is.

Furthermore, their submission is very concerned about the rights of copyright holders to deny access to 'unauthorised users', but very little is said about this 'authorisation'. Nowhere in their submission does the MPAA talk about the legitimate uses of a copyrighted work, nor do they equate the people who are legitimate users of a copyrighted work with the 'authorised users' they talk about.

They spend many paragraphs talking about the different ways that access control technologies allow specific types of use; they talk about ways to limit what a user can see and for how long they can use the work. These issues have little to do with copyright - nowhere does their submission talk about fair use for research, or any of the many legitimate uses of copyrighted works which are noninfringing. It is notable that they concern their point of view to the idea that "lawful" users are ones that have agreed to some license that limits their use of the work in various agreed ways. The question of who sets this license, or the question of whether this license restricts any of the uses which are allowed by the copyright laws, is left conveniently unanswered.

To my mind, the principle reason the MPAA leaves so many of these things unanswered is because it cannot answer them. It does not try to defend its sweeping statements because it knows that they have nothing to do with copyright and everything to do with charging money for any access to the copyrighted work. The MPAA is not interested in any use of their work that does not, directly, result in their financial gain. They have demonstrated this many times in various lawsuits that have attempted to restrict the legitimate uses of their products (for instance, the lawsuits against "fan" sites that reproduce movie images for the mutual interest of fans of that movie for no personal gain of the maintainer of the fan site.

Their submission does not cover, in any detail, the many reasons that other respondents have given as to why any access control technology implicitly limits the fair use of the copyrighted material. This is because the MPAA is only interested in limiting use to those people who have paid, and to those uses which it feels it can extract maximum financial gain out of. No company would be allowed to produce a player which would allow full access to the entire copyrighted work (for instance, to allow access to single frames or to subtitle text on a DVD) - the MPAA, with one of its members (Sony) being a major manufacturer of retail consumer DVD players, would simply not publish any material which was playable on that player. They can do this because one of their many subsidiaries is the Content Control Authority, the company which any potential DVD player must apply in order to read DVDs published by the members of the MPAA.

Ultimately, their submission reads as an arrogant, biased threat: "We know what's best, and we're not toing to tell you why. We want to have all the control, and we're not going to publish on anything but our own terms." Their last sentence pretends that they have stated their case, when they have done little but talk about their own system. They have not addressed any of the issues brought up in the Notice of Inquiry - I feel for the simple reason that they have no good answers. Nor do they attempt to provide any answers for the many arguments that "the contrary is true" - even though these arguments have been well known and constantly reiterated in the public media. Again, I feel this is simply because they cannot provide any reason why access control measures protect the copyright holder's rights and do not threaten the full rights of all legitimate users of copyrighted materials.

In closing, I would commend to you the arguments forwarded by the Massachusets Institute of Technology Media Lab, the Association of Computing Machinery, and the Electronic Frontier Foundation. These three documents, I believe, cover the full spectrum of objections to the proposed Act. The MPAA, on the other hand, does little to defend its position at all.

Yours sincerely,

Paul Wayper