Re: Time Warner's comments on the Digital Millennium Copyright Act.

To Whom it May Concern:

I am aware of Time Warner's concerns concerning copyright. However, I also believe that many of the comments to which I am replying are shortsighted, or contain glaring omissions. This, I will examine their response point-by-point, and state my own responses to these.

Point 3 states that "copyright protection measures" have not blocked out access for people who wish to lawfully use products such as DVD discs. This is patently false. Using the CSS system for DVD discs as an example, I can state that such measures not only prevent access to lawful users, but do so in a discriminatory manner. The first issue with such systems is access on computers. Aside from a relatively small number of authorized DVD playing set-top boxes, it is theoretically possible to play these discs on a personal computer. However, no quality playing software has been made available on any platforms other than Microsoft's Windows operating systems. A player also exists for Apple's Mac OS, however the quality of this software is poor, as the audio often loses synchronization with the video. I am currently unaware of any software for any other platform which can play a DVD disc at all, much less in a high-quality manner. This is discrimination, based on the user's choice of operating system. Clearly, an open standard would allow for users to create software to play a DVD disc on any platform they desire, and it could do so without causing any damage due to copyright if implemented correctly.

Another interesting example is Stephen King's newest book, entitled "Riding the Bullet." This book has been released only in electronic form, using a proprietary "e-book" format. King uses an Apple Macintosh computer, for which there are currently no programs which can read this format. Therefore, Stephen King cannot read his own book without first transferring it to another format. This violates the Digital Millennium Copyright Act. Therefore, simply because of his choice of computing platform, it is illegal for Stephen King to read a book which he himself wrote. For more information on this, please see the Law News Network article on the subject, which can be found on the Internet at http://www.lawnewsnetwork.com/practice/techlaw/news/A20129-2000Mar30.html

The other discriminatory manner in which products such as CSS prevent access to legitimate users is seen in the "regional encoding" of DVD and similar products. Far from preventing piracy (as this "protection" can be easily circumvented with the purchase of a DVD player set to play discs from other regions), this software has enabled two more insidious practices. First, artificial inflation of prices. It is well-known that the same DVD disc brings different prices in different markets. The United States, for example, has one of the highest average prices for a DVD disc in the world. Other nations, such as India, pay less, in some cases dramatically less, for the same disc. The lower prices are obviously still profitable to a DVD-making business; otherwise, the discs could not be sold at all in these nations. However, regional encoding and similar technologies allow them to force users in the United States and Europe to pay artificially-inflated prices. This is discriminatory, based on a user's choice of residence.

The second problem with regional encoding deals with one of the very practices which this nation was formed to prevent: censorship. An example of this can be seen in DVD discs containing Stanley Kubrick's final film, entitled "Eyes Wide Shut." The version sold in the United States has been digitally altered in subtle ways, including the insertion of black-robed figures into various scenes

which block the user's view of portions of the screen. This same movie is sold without these figures in other regions. Ostensibly, this is to prevent children from viewing "objectionable content." However, it is already stated quite clearly on the disc packaging and the movie itself that this disc is not to be viewed by children anyway. Thus, there is no need for taking such measures to protect someone who is never supposed to see this film.

Points 4 and 5 assert that copy-protection measures have not prevented lawful users from using their legitimately-purchased content; this has been disproven above. Point 5 additionally states that the content has been made more widely available because of such technology. However, no proof of this fact has been given.

Point 6 asserts that the VHS format and television formats are available as alternatives to the DVD format. The truth is, neither of these are viable alternatives. Quality of picture and sound are degraded significantly, and the films are often released on these formats much later than on DVD. Further, television presents the problem of commercial interruptions, which are absent on DVD and VHS. This hearkens back to the fallacy of "separate but equal" seen in many restaurants in the early and middle twentieth century, where the facilities provided for African-Americans were normally of much poorer quality than those provided for whites. While the basis for discrimination is different with the differing formats, parallels can clearly be drawn.

Point 13 is nothing more than a reiteration of statements proven false above.

Points 14 and 15 are identical, and relate to "such works or 'classes' of works" without even stating to what the phrase "such works" is supposed to refer. I can only assume that this is an error in the document itself, but it does show a pattern of repeating the same point over and over again. This is generally considered to be poor form in a debate.

Points 16 and 17 are also identical. These elaborate on the statement made in Points 14 and 15. However, they challenge users to come forth and state that they have been engaging in legitimate activities while circumventing copyright protections. This is clearly a violation of the doctrine that a person must be presumed innocent until proven guilty. No person in the United States can be forced to prove his own legitimate acts; rather, it is the task of an accuser to prove illegal acts. Therefore, this final statement in Points 16 and 17 must be taken as invalid, as it cannot be fulfilled in a constitutional manner.

Points 19 and 20 state a probable negative effect on the DVD market if copyright protections were to be removed. Again, however, no evidence toward this is given. While Point 20 does cite the delay of DVD-Audio and its delay due to the exictence of DeCSS, it does not prove that DeCSS makes DVD-Audio an inviable market, or would have had any effect on said market. Indeed, it is unlikely that DeCSS would have had any impact on this market, owing to the fact that the DVD-Audio standard had not been published at the time and therefore it would have been impossible for DeCSS in its present form to circumvent the copyright protections.

Point 21 states that the author is unaware of any impact on the DVD markets which is attributable to such circumvention. This is appropriate, because a quick look at the sales figures in the current markets is enough to prove that no impact attributable to copyright circumvention has even taken place. Particularly interesting is the example of the compact disc industry. The Recording Industry Association of America (RIAA) has constantly stated that the

MPEG-1, Layer 3 format for audio, commonly abbreviated as "mp3," has caused it to lose billions of dollars. However, the industry's sales figures for 1999 indicate a net profit of 1.4 billion U.S. dollars. This is attributable to a 10.8% increase in compact disc sales, accompanies by a 12.3% increase in the average price of a compact disc. Where are the losses RIAA cites? The indistry claims to be losing money, and yet its own sales records indicate that it is growing at a healthy rate. This is a very curious thing, and should be investigated further.

Point 22 is again a simple repetition of Points 14 through 17.

Point 23 states that the definition of "classes" of copyrighted works should not be attempted, because it is based on "shear speculation." The author claims that speculation is "an extremely unsound basis for the destruction of copyright protection" while not addressing the fact that such speculation was the very basis for the creation of such "protection." It also reiterates the final statement in Points 16 and 17, which have already been proven unconstitutional.

Points 25 and 26 are identical, as are 27 and 28. Points 25 and 26 again assert that "protective" measures such as CSS allow for an increase in the availability of copyrighted works, because the "dangers" of digitization are "ameliorated, if not eliminated." Again, however, he provides no evidence that this will cause an increase in the availability of copyrighted works, nor does he even provide evidence that the dangers of digitization are ameliorated. This last statement can be shown to be quite false, in fact. DVD piracy does in fact exist, and has done so ever since the format was introduced. This is possible because the same devices which DVD makers use to create legitimate DVD discs are also purchasable by pirates. These work by not bypassing the encryption CSS uses, but simply ignoring it. The disc is copied, encryption and all, and is therefore still playable on a standard DVD player.

In summation, I hold that the Digital Millennium Copyright Act has not been shown to benefit consumers by the comment to which I am replying. Further, I hold that the comment has not shown that this act is necessary as a protection for corporations and other copyright holders. Further still, I hold that the corporations who defend this Act appear to wish to do so by unconstitutional means, as evidenced by the author of Time-Warner's repeated advocacy of users proving their own innocence. This merits further investigation.

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