

Why the DMCA is Wrong

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1. Introduction

This law is in an egregious attack on consumer rights. It has always been understood, and affirmed by the Supreme Court, that when you buy a copy of a copyrighted work, you OWN that copy. It belongs to you. What you may do with it is determined by the doctrine of "fair use".

Under "fair use", you may do any of the following:

1. View it however you wish
2. Manipulate it however you wish (including taking it apart to see how it was put together)
3. Make copies of it as backups (for personal use)
4. Make copies of it for the purposes of interoperability (again, only for personal use)
5. Briefly quote from it in your own work (as long as credit is given)

Under "fair use", you may NOT do any of the following:

1. Make copies of it for sale or distribution (this includes making a copy and giving it to a friend)
2. Quote from it extensively without giving proper credit

The doctrine of "fair use" is a tried and tested one. It has worked well for written works, printed works, photographs, and recorded analog audio and video. Why then, did the lobbies for the recording industries decide that when it comes to digital works, the doctrine of "fair use" is not good enough?

The answer is greed. The people who pushed for this law's passage saw the emergence of digital technologies as an opportunity to rewrite the rules. Since the digital media are new, they thought they would try and fool people into thinking that "new" rules are required. This is their bid to remove all of the existing rights of consumers for no other reason than that it will make them money. They want to change the relationship between the buyer and the seller so that the buyer, instead of owning the copy that he purchased, merely owns the right to view it under certain conditions. Under this law, even though you have paid for a copy of something, taken it home, and have physical possession of it, you still do not own it. Under the DMCA, ALL of the rights listed above under the "fair use" doctrine are either eliminated or curtailed in some way.

Even though the recording and movie industries are currently reporting record profits, they still want more. They want to tip the balance of power even further in their favor. It isn't enough that they control everything

that I see and hear, they want to invade my home and control HOW I see and hear it. And the only reason is that not even their record-breaking profits are enough to satisfy their greed.

2. Increased danger on their part does not equal decreased rights on my part

The MPAA and RIAA will provide arguments about how things are "different" when it comes to digital media. They will say that because of fact that digital copies do not decrease in quality, there is a greater danger that unauthorized copies will proliferate and cut into their profits. I agree that this danger exists, but such copies are ALREADY illegal under existing laws. Why do we need to extend the law to make other, unrelated acts illegal, too?

It does not matter how great the danger of them losing money is. My rights are still my rights. I don't care how badly they want to prevent theft, they will have to find a way to do it without taking away my freedom.

3. "Access" or "copying"?

The purpose of this law is quite clear. Get control of media, even when it's in people's homes. Control how they are able to view such media. Then charge more and more money and put more and more restrictions on it.

The most telling statement is the one about preventing circumvention of any means that "effectively controls access to a work". This shows that the intention is not to control the copying of work, but to control ALL ACCESS OF ANY KIND to copyrighted work, including that which falls under the doctrine of fair use. By making it illegal to do any of the things which the Supreme Court has already ruled are legal, this law will destroy any notion of fair use.

4. What does the law really do?

The DMCA does the following things:

1. Prevents you from viewing any work that you purchased by any means, unless the copyright holder says it's okay.
2. Prevents you from finding out how the access to the work is controlled.

These two items, in turn, will allow copyright holders to do the following:

1. Prevent you from making copies of a work, even for the purposes any of the "fair use" reasons listed above. For instance, if you want to make of backup copy of a work in case you lose the original, the copyright holder can stop you by cutting off your "access". You would instead have to buy a new original.
2. Prevent you from viewing the work in any home-made devices. So if, for example, I want build my own DVD player or other device for reading electronic media, I can't use it to play discs that I bought (and that I own) because the copyright holder may legally bar me from doing so, even though this falls under "fair use" (which the Supreme Court has already ruled is legal).

3. Prevent you from criticizing a work by cutting off your access in cases where you want to quote from the work.

These powers are all granted by the DMCA, and they all infringe upon the legitimate rights of the consumer. This law is not about preventing theft, it is about gaining power. And the power that is gained will do untold harm to consumers.

5. Conclusion

The DMCA is a sham. It is designed not with intention of preventing theft, but with intention of seizing power. It will trample consumer rights, eliminate fair use, and grant unreasonable control to the copyright holder. All of the things the DMCA is ostensibly designed to do (i.e., outlaw theft and non-fair use copying) are ALREADY ILLEGAL. This law's only possible purpose is to criminalize that which has always been legal. It is an attempted end-run around the Supreme Court's decision on "fair use". The law is unjust and should be stricken from the books immediately.