

Reply comment to commentary of Mr. Bernhard Sorkin, Senior Counsel for Time Warner Inc.

To whom it may concern:

I wish to reply to the comments submitted by Mr. Sorkin regarding the Digital Millennium Copyright Act. It is my opinion that the current provisions of the DMCA, and in particular the prohibition of circumvention of access-control technologies, will substantially restrict the freedom that consumers currently enjoy with regard to copyrighted works and hinder the progress of media technologies.

Mr. Sorkin states that circumventing an access-prevention measure is prohibited by the DMCA, whereas circumventing a copy-prevention measure is prohibited. However, the very nature of digital technology is such that information must be copied between systems in order to be accessed and used; therefore, a copy-prevention mechanism is also an access-prevention mechanism, and circumvention of such would be illegal under the DMCA. Obviously, such draconian limits on copying are counter to the doctrine of fair use.

Furthermore, access-prevention measures do prevent fair use, despite Mr. Sorkin's assertion to the contrary. The case of the DeCSS program is an obvious example. If one owns a DVD, copying the contents of that DVD to one's own computer can hardly be considered infringement (providing the contents are not distributed to any other parties). However, those persons who chose to distribute DeCSS have been sued for violating the DMCA, and preliminary injunctions have been issued against them. Clearly, therefore, the current wording of the DMCA has the potential to remove the existing rights of consumers.

It is true, as Mr. Sorkin asserts, that it would be difficult to remove access controls from a given class of works without opening those works to infringing uses. However, laws preventing copyright infringement have existed for far longer than the DMCA. Therefore, creation of further barriers to infringement seems unnecessary.

On the fourth page of his commentary, Mr. Sorkin alleges that formats such as VHS are equivalent to advanced digital media such as DVD. This is patently false. In many cases, the DVD version of a work contains extra material which is not available in any other format. Therefore, the access-control measures of the current DVD format do decrease availability of certain works to some users. If a person already owns

a computer with a DVD-ROM drive, it is unreasonable to expect that person to also purchase a hardware DVD player or a new operating system simply because no commercial manufacturer has chosen to release DVD software for the existing operating system.

All digital information must be encoded in some format. A magnetic or optical encoding of information is not nearly as readily usable as a printed page; it must be used in conjunction with a decoding technology. Therefore, it could be argued that the very act of placing a work in digital form surrounds that work with an access-control measure. If technology that circumvents such measures is not permitted except with the publisher's consent, then all works could only be viewed using technology that had been approved by the publisher. To continue Mr. Sorkin's analogy to books, this would be a situation where one could only read a book using special lenses purchased from the publisher of that book. If a person were to examine the lenses and determine their properties, that person would be prohibited from manufacturing his/her own version of the lenses, such as a set of lenses capable of reading the books of multiple publishers, or lenses which also performed prescription vision-correction.

The entire provision against circumventing access-control measures is deeply flawed. It is my contention that there is no class of works to which this provision can be applied without infringing upon the legitimate rights of the consumer. Furthermore, this provision also harms those who wish to reverse-engineer or analyze a copyrighted work. Such activities are essential to the continued progress of technology, and must not be unfairly hindered. It is my hope that your Office will recognize the flaws in this law and choose to exempt all works from it until such time as the law can be suitably reworded.

Alik Widge
97 Fredericksville Rd.
Mertztown, PA 15232
(610) 682-3632
aswst16@pitt.edu