

DMCA Circumvention of Access Control Reply to Comments

Noninfringing uses of certain classes of works will be adversely affected by the “prohibition of circumvention”. The “Fair Use Doctrine” fundamental to copyright law already has been interpreted to safeguard the enumerated purpose of “promoting the Progress of science and useful arts” (Art. 1, sec.8). The DMCA has the effect of placing overbroad and vague restrictions on legitimate and significantly beneficial uses of unauthorized copying of DVD material. Under the CSS scheme DVDs will only be played on authorized DVD players. This requirement will stifle a consumers legitimate use of the copied material by not allowing the consumer to “port” or copy the material digitally in another format or copying it to another storage medium. Although the Original content providers and their trade groups such as the RIAA probably do not intend to enforce a provision that prevents consumers from “porting” their content, the option exists for these content providers and groups to selectively oppress certain consumers under the DMCA. Not only will this hasten the obsolescence of DVD as a medium but it will have the effect of driving legitimate and previously allowed recording underground, merely because of the existence of the new wired world. The law must support new legitimate consumer innovations not subvert and destroy them because a very few do not want to innovate in the new method of distribution.

Legitimate archival activity and research would also be “chilled” in an environment where copying DVDs is a criminal activity. Although once again the original content providers probably do not intend to stifle this legitimate activity, the law will allow for selective oppression and to no beneficial end for the public. Reporters and other journalists could potentially be selectively oppressed by this provision if their view were unpopular with the content providers and industry groups. Criminalizing this work will not stop it and will only drive it underground and or offshore.

Most importantly though is the draconian effect on the “open Source” movement in software that would undoubtedly occur. “Open Source” is a powerful and beneficial philosophy that benefits the consumer because it allows for constant improvement and innovation in computer code at very little cost. It is the very antithesis of a “Microsoft like” domination and has resulted in new choices for the consumer. The anticircumvention provisions of the DMCA although not intended to thwart the “open source” movement could be used for this very purpose. After all copyright protection is not limited to entertainment content but also is inclusive of software computer code. Any code writer could then use this act to selectively oppress some other writer who may be improving the code. The very act of getting around encryption to make a better mousetrap is now a criminal endeavor.

The anticircumvention exceptions need to allow for circumvention except in the cases where circumvention has “no conceivable legitimate purpose”. We need to have a “fair use” exception that will encourage public use of content and encourage public innovation. Criminalizing the scientific community and consumer should be the furthest affect of this act.

Respectfully Submitted,

James Prendergast, Esq.

312-945-3983

312-560-4470

ndopren@sprintmail.com