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LIBRARY OF CONGRESS
Copyright Office
Washington D.C.
Via E-mail to 1201@loc.gov

Re: Docket No. RM 99-7A

Reply comments to the U.S. Copyright Office on the Adverse Impact on Noninfringing Uses from the 1201 Prohibition Against Circumvention of Access Control Technologies

The MPAA in their comments state "[M]ost 'lawful users' are licensed users, and most 'non-infringing uses' are uses that are carried out pursuant to a license agreement." The MPAA focuses its attention on audio-visual material sold for public entertainment. Yet Title 17 Chapter 1201 applies to all copyrighted works and, under present law, that includes almost *any* new expression, not just commercial recordings. In particular it covers all e-mail. In my original comments (number 105), I gave as an example:

The End of the Paper Trail

Already companies are programming internal e-mail systems to erase e-mail from archives after a few months. In the future, companies will distribute internal memos in a time limited electronic format that can only be played on company computers. The software that plays these memos will not permit them to be saved in a neutral format. Any employee who tries to do so will violate 1201(a)(1). This will effectively eliminate the paper trail that is used to prosecute white-collar crime and end whistle blowing as we know it.

My prediction has come true more quickly than I expected. I recently received the following invitation to the unveiling of a new product:

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>From: Her Majesty's Secret Service  
>To: All Members of Internet World's Editorial Community  
>Date: March 28, 2000  
>Subject: Classified  
>  
>As a member of the Editorial Community at Internet World 2000,  
>you are cordially invited to a private showing of a new generation
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>of e-mail security software.
>
>A few of her tamer attributes include:
>-- "For your eyes only" messages, which self-destruct as soon
> as the recipient finishes reading; they cannot be saved, copied, or
>printed.
>
>-- An "Auto-Shred" feature, which erases a message at a
> predetermined time ~ whether it was read or not.
>
>-- An "Oops" feature, which allows the sender to recall or
> reroute a message, as long as it is unread.
>
>But in addition to redefining e-mail security, this application pens
>an entirely new genre of software ~ transactional e-mail. With this
>programme, secure, unbreakable e-commerce transactions and
>customer authentication can be completed entirely within the system,
>even if the customer is no longer online. There's no longer a need
>for secure web servers.
>
>Pity -- we were growing so fond of them. But we've better things
>to do than worry about prying eyes, wouldn't you say?
>
>Date: Tuesday, April 4, 2000
>Location: Suite #669
> Grand Wilshire Hotel
> 930 Wilshire Blvd.
> Los Angeles
>Time: 1400 to 1800 hours
> (2 PM to 6 PM)
>RSVP: sandy@intrapromote.com
>
>Martinis will be served. Do come thirsty.
>
>And fear not for your safety, as various members of INTERPOL
>will be at hand to dispel any mayhem that should ensue.
>
>Your previously held notions of e-mail security will be shaken, not stirred.
>

Under the MPAA's interpretation of 1201, a recipient of e-mail sent using this new product would be bared by law from attempting to save a copy. This would be true even if the recipient thought that the message ordered conduct that was unethical or illegal, or if the recipient merely wished to be protect against later charges that their conduct was unauthorized. This is not, I believe, what Congress had in mind. The unintended consequences of 1201 as understood by MPAA are truly frightening.

Respectfully submitted,

Arnold Reinhold