

Home Recording Rights Coalition
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David O. Carson
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Sent via email: 1201@loc.gov

Reply Comments in Docket No. RM 99-7A

Dear Mr. Carson:

On behalf of the Home Recording Rights Coalition, I write to offer our comments for placement in the docket. Founded in 1981, HRRC is a leading advocacy group for consumers' rights to use home electronics products for private, non-commercial purposes. The members of HRRC include consumers, retailers, manufacturers and professional servicers of consumer electronics products.

In our view, fair use remains vital to continued consumer welfare in the digital age. We believe consumers should continue to be able to engage in time-shifting, place-shifting, and other private, non-commercial rendering of lawfully obtained music and video content. Products and services with substantial non-infringing uses, which enable fair use activities by consumers, should continue to be legal.

Throughout the debate over the Digital Millennium Copyright Act, the act of circumvention frequently was compared with the act of piracy. We made the point then, which we think is important to emphasize here, that traditional home recording practices have nothing to do with commercial retransmission of signals, unauthorized commercial reproduction of content, or other acts of "piracy". Nor should circumvention and piracy be deemed to be synonymous, as the Library of Congress audio-visual collection preservation team itself has confirmed.

In reviewing the comments submitted in this docket, we read with particular interest the joint comments filed by the Technical Coordinator of the National Digital Library Program and the Chief of the Motion Picture, Broadcasting, and Recorded Sound Division of the Library of Congress. They say in relevant part: "It may be necessary for the Library to circumvent technological controls on access to copyrighted works in order to preserve digital audio-visual works for the long term." They also point out that "other legitimate archives" also may need "to circumvent protective technology in order to preserve important content for the future."

Their views, and those filed by the representatives of libraries and higher education, confirm that there are indeed instances in which rigid implementation of the anti-circumvention provisions of section 1201(a)(1) would be contrary to the national interest and general consumer welfare. It would appear, for example, that the Library's own audio-visual collection preservation team is, "or are likely to be in the succeeding 3-year period, adversely affected by virtue of such prohibition in their ability to make noninfringing uses of that particular class of works under [Title 17]." The library and education communities similarly demonstrate that they too would be adversely affected if their members were precluded from engaging in limited circumvention for essentially fair use purposes.

It was this sort of fair use that section 1201(a)(1) was devised to protect. HRRC believes that such uses can and should be accommodated in law and regulation. With respect to devices and technologies, HRRC believes that Congress intended the following in enacting the DMCA, as reflected in the text of the law and in its legislative history:

- ◆ As established in section 1201(c)(3), the DMCA should not be read to dictate the design or component selection of consumer electronics, information technology, or telecommunications products, or whether in their design or componentry they infringe intellectual property rights or fail to comply with applicable licensing agreements. As Senator John Ashcroft, and Representatives Tom Bliley, Rick Boucher, and Scott Klug made clear in their floor statements accompanying passage of the legislation, the only exception is set forth in section 1201(k). See, e.g., S11887 (Oct. 8, 1998) (Ashcroft); E2137-38 (Oct. 13, 1998) (Bliley); E2166 (Oct. 14, 1998) (Boucher); and H10621 (Oct. 12, 1998) (Klug).
- ◆ The DMCA does, however, address the widespread distribution of a "hack" pertaining to a consumer electronics, information technology, or telecommunications product. The distribution of such hacks is not properly part of the debate over section 1201(a)(1) and should instead be considered under section 1201(b) of the DMCA and applicable laws pertaining to the misappropriation of intellectual property.

We urge you to implement section 1201(a)(1) in a way that preserves the ability of information consumers to engage in the type of activity recognized for over two centuries as essentially fair use in character.

Sincerely yours,
Ruth Rodgers
Executive Director