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class of work: written, human readable documents explaining the means of operation of and potential defects in a technical protection measure.

summary argument:

any written expression, even that which documents ways of violating laws, is protected speech under the first amendment. The DCMA can be interpreted as making the publishing of information related to security flaws that if exploited would lead to circumventing some protection mechanism illegal. This is not consistent with the first amendment, nor is it consistent with common sense - we need the flaws to be identified so they can be fixed, particularly when they relate to the protection of computer systems from malicious exploitation. Therefore, it is important to exempt and exclude these text documents. An executable computer program whose purpose is the circumvention of a protection measure would not be included in the class, but a description of how such a program could be written would be included.

factual support/legal argument

Currently, companies are withholding information relating to the problems solved by security patches to their software on the basis that disclosing the details of a problem in an operating system would expose the manufacturer to liability under DCMA. Thus this information is available to non-US citizens but not to US citizens. A specific example relates to RedHat software, but the law as written causes this rather absurd consequence and it will appear in the context of other software. This is caused in part because software that is not owned by any one company, be it in the public domain, or open source can also have security flaws. However, exposing these flaws, even in the context of a patch to repair the flaw is a violation because no one company owns the software. While the law may be clear and cause the intended effects for a software component that is owned by a specific company or individual, it does not work correctly in the cases where the item is owned by no specific company or individual.