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Reply Comments in Support of Static Control Comments

Descriptive Name Class

1. Computer programs embedded in computer printers and toner cartridges and that control the interoperation and functions of the printer and toner cartridge;

2. Computer programs embedded in a machine or product and which cannot be copied during the ordinary operation or use of the machine or product; and

3. Computer programs embedded in a machine or product and that control the operation of a machine or product connected thereto, but that do not otherwise control the performance, display or reproduction of copyrighted works that have an independent economic significance.

Summary

From the viewpoint of a purchaser of a Lexmark printer the software is designed to shut down the printer should the toner and ink supplied to the printer not be provided by Lexmark. In effect, such software is spying on the owner post sale to ensure that the owner purchases only Lexmark approved cartridges. The computer program embedded in the cartridge and printer does not protect access to copyright material but interferes with the lawful use of the printer by its owner.

Argument

Were Lexmark to attempt to sell printers in the marketplace requiring the purchaser of a printer to sign a contract to use only Lexmark cartridges for the lifetime of the printer, no court would uphold such a tying arrangement. Lexmark has discovered a novel approach to accomplish that by using embedded software whose sole purpose is to prevent the printer from operating should a non-approved cartridge be inserted. In effect, the software is spying on the owner of the printer after sale and punishing the owner of the printer should they purchase cartridges from anyone but Lexmark. This sort of "spyware" that Lexmark has created is really not covered by exemptions regarding privacy in parts of the DMCA and an exemption should be granted not just for printer cartridges but also for any software whose sole purpose is to prevent interoperability and illegal tying arrangements