

David Hoffman
P.O. Box 13809
Stanford, CA 94309

hoffman@cs.stanford.edu
(650)723-3692

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David O. Carson
General Counsel
Copyright GC/I&R
P.O. Box 70400
Southwest Station
Washington, DC 20024

Dear Mr. Carson,

I am a computer science student at Stanford University and was fortunate to be present at the hearings your office held here on May 18-19. Part of the testimony of Dean Marks nearly had me laughing out loud, so I am grateful for the opportunity to rebut him. In particular, I wish to address some remarks found on pages 179-183 of the transcript of the May 19 hearing.

Mr. Marks dismisses the potential harm the DMCA poses to the rights of citizens as "hypothetical and speculative" while claiming that the lack of access controls will lead to a diminution of digital entertainment content available to the public. Concerns over a law that has not yet gone into effect are necessarily theoretical, but I would submit that his doomsday prediction is even more hypothetical and speculative because there is direct evidence to the contrary: the CD.

The music CD is a digital recording that has no encryption or access controls of any kind. The CD market has grown to nearly \$13 billion in annual sales, and 78% of that market is controlled by just five companies - EMI, Universal, BMG, Warner Music, and Sony Music. Clearly these companies are not "reluctant to make their works available", despite the lack of technical control measures.

Not only are CDs unencrypted, they are reproducible using readily obtained consumer equipment. CD recording drives for personal computers have been available for over eight years. They have been inexpensive enough to be affordable for the average computer owner for three years, with prices dropping so low recently that they have begun to appear as standard archiving equipment on new PCs. These drives make it easy to create a perfect copy of a music CD onto a blank CD-R disc.

The cost of individual discs in small quantities was less than \$4 in 1997, and has now dropped to under one dollar. Compare this to the average retail price of a commercially produced music CD, which has remained approximately \$13 for the

past ten years. One would expect this vast price differential to lead to massive piracy and a drop in CD production if the lack of access control were really a disincentive to release new works.

But this has failed to happen. In fact, according to the Recording Industry Association of America's 1999 year end statistics, CD sales have continued to break records both in dollar value and number of units sold, increasing at about ten percent annually.

Why hasn't the music CD industry collapsed under the weight of piracy? My personal opinion is that it's because most people are not criminals and the existing copyright laws already work.

My concern with the scope of the DMCA is that it creates new crimes and a new class of criminals. The anti-circumvention provision does not just outlaw attempts at copying a protected work, it outlaws making any use of that work not foreseen by the manufacturer. As someone who does research involving digital image formats, I am a potential member of this new criminal class. I have rented and purchased many movies on DVD and watched them without fear of prosecution. But if I were to attempt to analyze the digital images contained on those discs, I would be violating the DMCA. This makes the largest existing body of data relating to my research unavailable. The fact that the same movies are often available in analog VHS formats is irrelevant, since it is the digital format itself and not the artistic content that is being investigated.

My constitutional right of fair use for academic research has been legislated away for fear of "threats" to the interests of copyright holders - threats that history suggests have very little substance. I realize that the constitutionality of this new law is beyond the Copyright Office's purview, but I hope that you will take a broad view in determining where exemptions to it will be granted.

Thank you for holding these hearings and taking comments from the public. I wish I had had as much opportunity to participate before the law was drafted.

Sincerely,

David Hoffman