INTERNATIONAL COALITION FOR COPYRIGHT PROTECTION

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Class of Works: Ebooks
Works in the Public Domain

Summary:

The argument of a number of those who posted comments on the rule making in favor of doing away with circumvention devices for ebooks and works which are in the public domain were situations which existed at the time the DMCA was passed into law and does not raise a new situation or something that has caused substantial adverse impact on them.

Argument:

The Coalition realizes that the Registrar of Copyright is well aware of Congress' intent with regards to the rulemaking proceeding because she quotes and tracks the Section-by-Section Analysis of the DMCA, specifically Section 1201 and given the examples in the Notice of inquiry the Coalition is confident with the reasonability of the Registrar in dealing with this matter.

Unfortunately, due to the comments and proposals raised by different organizations and individuals, the Coalition feels it must makes its statement so that these general arguments of works in the public domain not being accessible due to the DMCA or having trouble with various forms of ebooks do not go unopposed. We will keep this short and to the point since the burden of proof rests on those asking for exemption.

The problem with exempting circumvention for works in the public domain is two-fold. One is that if the work is in a medium that not only contains the work in the public domain but a work that is not, it allows the infringement of a work that is covered by copyright. Two is that just because a public domain in ebook form (or other digital form) does not mean it should be available for free. The company selling the ebooks took the trouble to put it in that format and if the consumer really wants the book and does not want to pay for it, he can find the same book elsewhere. Barnes & Nobles sells hardcover books in the public domain—they do not give them away for free just because they are in the public domain.

The problem of buying an ebook format and then upgrading their computer would be more of a consumer problem, one that should be taken up with the company whom they purchased the ebook from.

Our point is not say that valid exemptions should not be made (such as for the blind), only that the proceedings be careful of making exemptions that do not really need to be made or can be handled in other ways that otherwise might adversely effect and do away with the protection of valid copyrightable works.

As the Registrar pointed out in the Notice of Inquiry, the availability of works in unprotected formats plays a part in this and public domain works are available in non-digital formats.

The majority of the arguments made for the above are in reality inconveniences which Congress spoke about in their side-by-side analysis "… are outside the scope of the rulemaking. So are mere inconveniences, or individual cases, that do not rise to the level of a substantial adverse impact."

Lastly, the rulemaking should not be used as a testing ground for balancing the copyright laws and free speech. The US Supreme Court covered this quite clearly in the recent decision in the Eldred v. Ashcroft case that Congress is not to be seconded guessed and also rejecting that Eldred's claims of free speech violations since the Copyright Act takes free speech into account. We will not detail the arguments here; they are covered very well in the Government's brief and the decision of the Court.