

Commenter's name: Barry Klawans
Class of works for exemption: Digital representations of musical works
Argument summary: 1) The inability to create noninfringing copies of musical works can lead to the loss of works that are not commercially successful.
2) Permanent barriers to creating noninfringing copies goes far beyond the constitutional copyright protection that protects works "by securing for limited times".

Argument:

I feel all musical works should be exempt from the prohibition against circumvention of technical measures as defined in the DMCA. I have grave concerns that limiting the legitimate owner of a work from every making an exact copy of that work opens up the risks of less popular works being lost to future generations.

As a personal example, I have a large collection of jazz recording from the 30s and rock records from the 60s. A large number of these works have been out of print of decades, unavailable in any form. I have, for personal use, transferred a number of these to CDs. The jazz recordings from the 30s were all recorded at 78 rpm, and the only turntables on the market today able to play them are quite expensive. If I did not transfer them to a modern format, I would not be able to share them with people outside of my home. (I have brought several recordings to my daughter's school for music history classes.)

The equipment needed to play the original recordings is becoming obsolete. Luckily I already own the equipment, and can use it to transfer the works to a newer medium. What happens if I own works that are hardware protected under the DMCA, and in the future the media they are on becomes obsolete? I will not be able to preserve the recording I own. The music industry is not interested in re-releasing old works on new media, unless the new releases will be profitable for them.

Subsection 1201(a)(1) of title 17 of the United States Code, which was added by the DMCA, prohibits attempts to circumvent technical copyright preservation methods by a person who is not authorized by the copyright holder. Unfortunately, with current technology, those restrictions will still hold after the copyright has lapsed. As an admittedly far fetched example, if I have a musical work protected under the DMCA that is 300 years old, but the same technology is being used to protect new works, I can not legally try to access the content of the old work, now in the public domain.

I also have some concerns that the DMCA is not in the spirit of the Copyright Clause in Article 1 of the United States Constitution, which reads "To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries" Having permanently locked copies of musical works, and laws against every having access to the technology to access the content, seems to go far beyond securing the rights "for limited times". The working of the clause leads me to the interpretation that our founding fathers put more

emphasis on promoting the arts and sciences over exclusive rights, but DMCA seems to turn that around.

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