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David O. Carson
General Counsel
Copyright GC/I&R
PO Box 70400
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Dear Mr. Carson,

I am rather disturbed by some of the assertions made in the previous comment
period, so I am filing this reply comment. Once again, I concern myself primarily
with the DVD issue, but I believe that it should serve as a template for other,
similar issues.

The MPAA's letter said

> "[The MPAA does] not believe that the users of any class of works
> are likely to be adversely affected, in their ability to make nonin-
> fringing uses of those works, by the coming into force of section
> 1201(a)(1)(A)."

Similarly, Time Warner's letter said

> "I cannot point to any 'class' of work ... the availability of which
> for non-infringing uses or for uses as to which the fair use defense
> would be available has been adversely affected or to any adverse
> impact on criticism, comment, news reporting, teaching, scholarship,
> or research."

Both of these are patently false. There is one example that is very obvious -
individuals who have computers with DVD drives but who do not run Linux or
Mac OS. I run Linux myself, and although I do not have a DVD drive (because
of this issue) I know others who do and are unable to play their movies.

But even if there existed DVD software for every operating system in existence,
this would still not be true. Under fair use, I am allowed to make a parody. If

The Matrix[2] were distributed only in an encrypted form, then a popular matrix parody[3] would not have been possible. My point is that some kinds of fair use neccessarily involve copying or accessing a work.

When Time Warner says that they are "vitally interested in the maintenance of the 'fair use doctrine,"' they refer to their use of someone else's copyrighted material. Time Warner is vehemently opposed to others' fair use of their copyrighted material.

The MPAA also asserts twice that

> The implementation of access control technologies has already increased the availability of a wide range of copyrighted materials to members of the public.

Unfortunately, they do not provide any examples or proof. I doubt that anyone seriously thinks the movie industry would shrivel up and die tomorrow if denied the DMCA; they seemed to get along fine before without it.

Before I finish I would like to break from the DVD subject for a moment and discuss Sony Computer's arguments. Firstly, the introductory paragraph is irrelevant. The size of a company should have no bearing on the rules that are chosen. If anything, it is less important to concern oneself with the large corporations because they are massive enough to suffer more infringing use.

Also, while Sony claims that they "are not aware that [their] access control measures have adversely affected the availability of our works to lawful users," I have a different story to tell. Sony's console in region-coded, and modification enables one to play games legally purchased in Japan. Thus the access control measures do affect the products' availability to lawful users. The same region-coding is true of DVD players as well.

The problem here is that it is impossible for any access control mechanism to differentiate between someone who is making legitimate "fair use," or someone who is committing a violation. Therefore I would ask the Librarian to grant exceptions to all access control mechanisms which infringe, even slightly, on fair use.

I would be very willing to testify at any hearings the Office may hold, but I am a student and would be unable to fund my own transportation to Washington, DC. If the Office were to hold hearings in California, I would be extremely willing to attend and/or testify. Thank you once again for presenting the community with a forum for addressing these issues.

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[2] Warner Bros., 1999

[3] http://www.detonate.net/matrix/ ; The usefulness of this parody as art is debatable, but it is definitely fair use and I personally found it amusing.