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

I am writing in regard to the Notice of Inquiry, specifically in reply to comments made by Time-Warner, Inc and the Motion Picture Association of America (MPAA).

In their comments, both of the above organizations repeatedly state that they know of no way in which the DMCA's ban on circumventing access controls is a bar to fair use. Obviously they have done no research into the matter, because there are several. I am only going to write about one.

This bar to fair use comes from the playback of Digital Video Discs (DVDs). The encoding format used in the creation of these discs is called the Content Scrambling System (CSS). For anyone to manufacture a hardware DVD player or software DVD player, they must first obtain a license to use CSS. In addition, such artificial constructs as "region codes" must be adhered to. These prove quite an obstacle to fair use. I am a user of the Linux operating system, for which there is no currently available software DVD player. Because of the restrictiveness of CSS, I am denied a fair use of the DVD, namely viewing in private. Time-Warner even tries to liken accessing the content of a DVD that I have already purchased to breaking into a bookstore and stealing a book! There is a crucial difference, accessing content of something that I have already purchased is a right protected by the First Sale doctrine. What they (Time-Warner and the MPAA) would like to do is make this doctrine void, and thus perpetuate their control over, and the ability to profit from, something that a consumer has purchased.

In its comment, Time-Warner states, in the last paragraph on page 2, that:

Anyone wanting to make "fair use" of a copyrighted work need only follow the same steps as he or she would in the absence of technological protections: buy or rent a copy, subscribe to a transmission thereof or borrow a copy from a library.

This statement is misleading, for the reason I stated above. In order to view a DVD, I currently have to have a player that uses a technological protection which must be licensed, for a fee. If I were to try to play this disc without such a license, one of two things would happen. I would be unable to view the disc, or I would be arrested for circumventing access control. If you do not believe this statement, I would refer you to the case of one Jon Johansen, who was arrested for helping to write a program called DeCSS, which would decrypt the contents of a DVD. This program, under the DMCA, is assumed to be a program to "pirate" DVDs, when it was in actuality an

attempt to write part of a program to play DVDs on the Linux operating system. If this program can be used to pirate DVDs, then the pirates are committing the crime, not the legitimate users that want to exercise their rights. The DMCA is flawed in assuming that everyone who wants access to the material outside of the manufacturer's way must be out to pirate it.

Respectfully,

John Starke