

This is a Comment on the DMCA. My name is Peter Gillespie. my address is: 1379 Economou Rd. Huntington, VT 05462. my email Address is: groundup@together.net I am a US citizen and freelance graphic artist.

There are 3 arguments that i wish to make against the DMCA.

1. the copyright power found in Article 1 section 8 was repealed by the 1st ammendment which states in relevant part "Congress shall make no law ... abridging the freedom of speech, or of the press..." It seems clear on its face that copyright laws abridge the freedom of the press. Since the ammendment should supercede the conflicting antecedants copyright laws that abridge the freedom of the press are unconstitutional.

2. Assuming arguendo that the first argument is rejected, the act must still fail because it overreaches the power granted by article 1 section 8 by purporting to extend existing copyrights. Article 8 states in relevant part "To promote progress of science and useful arts, by securing for limited times..." No power is given to extend the term, nor would extension of existing copyrights serve the limiting purpose of the grant. Because copyright infringes the first ammendment it should be strictly interpreted and limited to its original purpose. Furthermore the power to extend would negate the temporal limit required by the article since if it can be extended it can be reextended ad infinitum.

3. While it may increase the term of new copyrights, Congress cannot extend the term of an existing copyright because it runs into an intractable conflict with the "Takings Clause " of the 5th ammendment. "...nor shall private property be taken for public use, without just compensation "

The original grant of copyright evades the clause by the fact that copyright attaches to the "Writings and Discoveries" at the moment of their creation; and since no-one can own anything until it exists there is no taking, nor can one copy that which he has not seen. However, once it is published every person has a right to copy and distribute it which commences on a day certain in the future. The takings clause clearly applies to future rights such as the remainder after the expiration of a term for years. In attempting to extend existing copyrights congress takes these rights and must therefore be capable of providing just compensation (fine of \$10,000 for each violation "not excessive") to every person (6 billion minus 1) to whom the law applies for the value of every copyright extended (how many at last count?) for the term of the extension. This is clearly impossible and therefore the act must fail.