

David O. Carson, Esq  
General Counsel  
Copyright GC/I&R  
Southwest Station  
Washington, D.C. 20024

Re: Section 1201 of The Digital Millennium Copyright Act (Docket no. RM 99-7A)

Dear Mr. Carson:

I am a librarian responsible for purchasing digital information at a nationally ranked top ten research library located in Texas. For several years I have been purchasing well in excess of a million dollars a year in digital information on behalf of my institution. I am replying to the Comment of Mr Sorkin of the Time Warner company who asserts that copyrighted materials with access controls will be available to the public through libraries.

Because technical protection measures are by their very nature designed to exclude access to intellectual content unless certain conditions are met, it should come as no surprise that libraries and library users have experienced this exclusion.

Among the categories of exclusion due to technological protection measures which I have personally experienced are:

1. Cases where the company that sold the digital information has subsequently gone out of business. In many instances technological protection measures have made access to this category of digital information impossible, despite the library owning rights to access or archive the information. There is no one left to contact for instructions on how to bypass the technical protection measures, or with whom to negotiate continued access. In these situations, the information is simply lost to humanity forever.
2. Cases where the vendor that provides the information has already made their sale, and technological protection measures have subsequently and erroneously made access impossible. We have had multiple cases where information is simply unavailable because there is no longer a profit to be had for the vendor in assisting the library to correct the technological protection problem and provide access. Oftentimes the product is no longer for sale, and the people who designed the technological protection measures are no longer with the company. The sums of money are too small to pursue legal action, and the result is that the information is simply no longer available.
3. Cases where technological protection measures implemented by the vendor restrict access to a certain class of readers. With the arrival of electronic information, libraries are no longer able to provide equal access to information to all readers. For example, in my institution there are resources that because of vendor imposed technological protection measures are not available to the taxpaying public, or in even more bizarre cases, are available to pharmacy students but not our nursing or health faculty; and even resources that are available to biology students but not to biology faculty.

4. Cases where technological protection measures restrict the use of material to such a degree as to be an impediment to scholarly research by limiting the hours or manner in which it might be read (for example, one key research-level resource cannot be accessed between 8am and 5pm) while other resources limit the number of people that may use the resource at any one time. Typically these resources also include technological protection measures that prevent the information from being archived by libraries.

In today's world, the publisher of digital information can decide who can read what, how they can read it, when they can read it, and whether it will be available in the future.

Every year hundreds of publishers throughout the world go out of business. Traditionally libraries have archived the output of these publishers, and enabled humanity to pass on its accrued wisdom to future generations. We have depended on libraries to play the role of providing an honest and objective archival record of mankind's activities. A library is a compact we make between ourselves and between generations, to share information in an honest and unrestricted manner. Technological protection measures are to a certain degree, the antitheses of this ethic. These types of measures have the potential to render this centuries old compact between generations impossible. Libraries will only be able to archive items that do not have technological protection, or archive those products which publishers may decide to make available to libraries with technological protection removed for archival purposes. As currently funded, libraries are never going to have the technological expertise or funding resources to reverse engineer the technological protection measures put in place by the thousands of different publishers and corporations who have subsequently gone bankrupt, or whom no longer care to support an obsolete technological protection technology.

Because of technological protection measures, there is a chance that your great grandchildren may very well not be able to read about the events that shaped your life, or about the discoveries and research that occurred during the year 2000. If the conference paper that holds the key to the cure for cancer is inaccessible to future researchers behind old or broken technological protection measures, or was not even archived because technological protection measures made it impossible -- then we will all suffer.

The blunt fact is, that if the intellectual output of your citizens is restricted behind the walls of technological protection measures, then the sharing of the nation's intellectual resources will be restricted, and our children's children may know little of our thoughts and deeds except what the current media conglomerates wish them to know. Future generations will not be able to rely on libraries to provide an honest record of the intellectual output of the past - because libraries will not have it in their web archives, or on accessible optical or magnetic media, or even in print.

Libraries are very familiar with the traditional concept of a book or journal being "out of print." This can mean that a current company no longer makes the product, but more frequently it means that the company that published the book or journal no longer exists. Luckily, hundred year old books and journals do not have technological protection measures, and copies can be made and shared. When our children look back a hundred years from now to the technologically protected electronic books, journals, and music of today -- they won't have access to this material unless something changes, they won't be able to make copies of material embedded with ancient

technological protection measures, and more than likely, the material will not have even been saved. The large media firms of today will be long forgotten names, just like the media companies of a hundred years ago are unknown today. Technological protection measures, may very well protect our children and their children from learning about our own culture, protect us from sharing our wisdom, protect us from our own history, and protect us from learning and understanding our selves.

Respectfully,

Dennis Dillon