Proposed class of works:
Legally acquired digital media (motion pictures, sound recordings, and e-books) for personal use and for the purposes of making back-up copies, format shifting, access, and transfer.

Note: when I say "ebook" I mean "ebook/etextbook/emagazine." Essentially, I'm talking about the electronic publication of a print publication.

Summary:
I want to switch from the Barnes and Noble Nook to the Amazon Kindle, but I am unable to read the ebooks I purchased from Barnes and Noble on the Amazon Kindle. Also, since I am unable to do that, Barnes and Noble has a monopoly on my purchases of DRM only material when only certain publishers allow their ebooks to be sold without DRM (Baen Publishing).

1. Problem created by technological measure

Due to the nature of DRM, once a content provider is chosen the user (in this case me) is forced to use their ebook software—regardless of whether or not we agree to the Terms and Conditions of the software used to read the ebooks. Also due to DRM, I am unable to read books on a Nook that I originally purchased for a Kindle application; I cannot easily switch from one ebook provider to another, or from one operating system to another (Windows to Linux) due to the fact that some ebook providers (Barnes and Noble) do not provide a software application to read their ebooks on Linux.

2. Activity needing to be done

As such, I need to be able to "convert" the books from the .azw that Amazon uses to the .epub that Barnes and Noble uses. I want to be able to read my books on Linux—something that is currently done by following a series of steps that the average computer user would be unable to follow.

For example, I have to:
- Install Beta software (WINE 1.3) and update to the latest version.
    - I have to manually add the ppa, something that I have to follow instructions for, and considering the people that I have to walk through when installing software on windows (much less linux), I consider it highly unlikely that the average computer user would be able to successfully install the ebook reader software.
    - Take my little sister, for example. She does not know how to do anything with her computer besides use it for the internet and word processing, along with games. I had to install the software for Nook on that computer for her.

- Download the ebook reader software (I will use Nook for PC because I have done it)
    - Run the installer with default settings
    - On versions earlier than WINE 1.3 (like WINE 1.2 (stable)), it would crash and remove the B&N specific DRM on the ebook while leaving the Adobe DRM on. I could not read ebooks on my linux computer without removing the DRM accidentally.

3. Why the activity is legal

I cannot successfully argue that this is legal, since the DMCA makes it illegal to remove DRM except under an exemption.

However, it should be legal because a) It enables the consumer to use the cheapest store when

purchasing electronic books, b) makes it harder for a company to establish a monopoly, c) gives the consumer the ability to switch platforms without repurchasing the books they want available on the other platform (in my case, adding up to the hundreds of dollars).

What I'm trying to say is that DRM is an anti-competitive technology when applied to a product (ebooks) that are sold in more than one location and hurts legitimate customers.

Another point I would like to bring up is the ease with which people come up with ways to circumvent DRM; a relatively simple google search brings up a multitude of methods to remove DRM, most of which is specific to the bookstore.

Therefore, I submit that people whom are willing to do illegal acts with content that they legally purchased *and do not redistribute* are better off than those who do not do any illegal acts with legally purchased content and are unable to switch bookstores because of that.

   (i) the availability for use of copyrighted works;

   • I have no clue what this means, but I'll give it a shot.

   • I cannot make available to my ebook reader a book that I purchased under a different method of DRM.

   (ii) the availability for use of works for nonprofit archival, preservation, and educational purposes;

   • As far as I know, etextbooks are extremely difficult to preserve; if you make a backup copy of the etextbook, you will not be able to view it if the computer that it was downloaded on crashes and no longer works. This is especially problematic for me, since my etextbook can only be on my single computer.

   (iii) the impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research;

   • Currently, the most harmful effect that the prohibition of circumvention on ebooks is effectively relegated to the etextbook category; the consumer (me) can only make a certain amount of copy acts per day; currently, with Barnes and Noble, copying one word decreases the available count for the day by one, and there are a certain number of copies that the user can make, even if they have to quote the etextbook one more time than their number of available copies permits.

   (iv) the effect of circumvention of technological measures on the market for or value of copyrighted works; and

   • There exists a company that sells ebooks that is both profitable and DRM free and that is Baen Publishing.
   • People will say that the profits of Publishers and ebook sellers will decrease: They are correct. The profits will decrease because people are no longer purchasing multiple copies of an ebook.

   (v) such other factors as the Librarian considers appropriate.

Use of a etextbook on a single machine:
   • I have Linux and Windows dual-booting on my computer. They count as different "devices" and I am not allowed to have my etextbook on another computer if my current computer crashes.

Here are a few factors to consider:

Can a new start-up selling ebooks with DRM effectively compete with Barnes and Noble or Amazon?
Will the new start-up be forced to use DRM in order to have some of the books that people will *want*?
Will the start-up's DRM be compatible with either Amazon's or Barnes and Noble's DRM?
Can I switch to a different ebook provider without repurchasing books that I already own?
Does the consumer have the ability to "sell" the ebook back to the bookstore? Can the bookstores be absolutely certain that all copies of the ebook that the consumer had were deleted?
What happens to the DRM if the bookstore goes out of business? (Is the DRM future-proofed against the bookstore going out of business and preventing its customers from ever reading their ebooks again?)
Is there a study by a reliable *outside* source upon the effect of DRM? (By outside I mean outside the book industry *in general.*)