

COMMENT DMCA 1201@loc.gov

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Re: Section 1201(a)(1) of The Digital Millennium Copyright Act (Docket #7M99-7)

Dear Mr. Carson:

Thank you kindly for this chance to submit my comments for your review. These comments are my own, and not those of my employer or otherwise and are in response to the Notice of Inquiry announced in the Federal Register Volume 64, No. 102.

I am a supporter of the Copyright system, and the methods used to prevent potential misuse of copyrighted works. I am however distressed at the enactment of the Digital Millennium Copyright Act (DMCA), in particular it's vaguely worded exemptions for 'fair use'. I would urge that this statute be amended with clearer wording so that issues no longer occur such as the recent scandles over creating a DVD player for the GNU/Linux Operating System. A recent ruling in case relating to this by a certain Judge Caplan stated this.

Judge Kaplan says in his ruling: [1]

"...there is no doubt that DeCSS was primarily designed or produced for the purpose prohibited in 1201(a)(2)(A) because the definition of "circumvent a technological measure" in 1201(a)(3) makes clear that decrypting or de-scrambling a copyrighted work without the authority of the copyright owner is the very definition of circumventing a technological measure. Therefore, even if the primary purpose here were to enable lawful possessors of copyrighted DVDs simply to play those DVDs on Linux machines the primary purpose would have been within the statute."

I believe that without a doubt the authors of the DMCA would disagree with that interpretation, and this is why it's so important that guidelines be clearly laid out so that consumers can exercise 'fair use' openly and without fear of retribution.

Our country has a long history and tradition of promoting the free trade of ideas and information. While the DMCA should protect organizations who use protective software, such as encryption mechanisms, to ensure the payment for services rendered to the customer via software. They should not have the right to restrict the flow of information. As has been laid down by a centuries worth

of copyright law or 'fair use' of copyrighted material is in jeopardy.

Fair Use law allowed the purchaser of the copyrighted work to make copies for their own personal use. The owner of a software package could make changes to that work, as long as they do not distribute copies in their entirety, or claim they copyrighted the work. Under certain guidelines in research, the owner could distribute parts of a work. Reverse engineering by the purchaser of copyrighted material was legal for any purpose, as long as the purchaser doing the reverse engineering followed guidelines to ensure that the final product did not include any copyrighted material from the original work. This would allow the purchaser of a piece of software to take it apart, and make fair use of media which they are expressly licensed to use. Allowing them to decipher or otherwise making variations of it thereby adding to the free flow of information. I believe these exemptions should be extended to the current statutes 1201(a) and 1201(b) of the DMCA, to ensure these liberties can continue to ensure the rights of consumers as well as copyright owners. If the possessor of the copyrighted material is not obtaining measurable services rendered for something he or she is not licensed to receive.

Sincerely,

Eric M Gibson