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Comment:

After reading all submitted comments in reference to the Digital Millennium Copyright Act (DMCA), it became very to me that two factions exist here. On the one hand, there were technology users and academics that favored broad exemptions. The other faction included mainly large corporations who came out in favor of a more stringent interpretation. While this comes as no surprise to any informed observer, it's important to note what has been supported and why.

For starters, let's examine Sony Computer Entertainment of America's contentions. They contend that "access control measures also enable us to ensure that even legitimately produced videogames are distributed only in the areas for which they are properly licensed. As is true of products in many other industries, a particular version of a PlayStation® videogame may be created for use only in a particular market, in which case its sale in other markets will produce only dissatisfied consumers." What Sony is really saying here is that access control technology has allowed them to segment markets of the world so that different prices can be charged in different regions. This scheme is nothing new, as it has been in place for quite some time with regards to Digital Versatile Disks (DVDs). However, Sony's logic is flawed as this practice has been found to be anti-competitive and thus illegal in several European countries. Using access control to this

end runs counter to the concepts of free trade. If a user buys a Sony game, they should be able to use it on their system (as they now own a license for it), no matter where they live. Anything less would be denying the customer something for which they have already paid. Furthermore, Sony Electronics seems to be hung up on this issue of control. Yet, the judiciary has been less than willing to grant Sony the amount of control they demand. For examples of this, I now turn to their litigation concerning Connectix Corp. (Sony V Connectix, 9<sup>th</sup> Circuit court of Appeals).

This case involved a piece of software called “Virtual Game Station.” The software enabled users to play Sony Playstation games on a personal computer by making the computer fool the game into thinking it was running on a Sony system. The software contained nothing that was copyrighted by Sony. In fact, it didn’t even play the games as well as a real Play Station could. However, Sony chose to sue in order to protect their trademark. Connectix Inc. used reverse engineering, a process that is under review by the Copyright Office, in order to discover how the Playstation worked. The judge in this case found this to be fair use, as Connectix was able to take what they learned and duplicate the result without infringing on Sony’s copyrights. Furthermore, the judge also found that this helped to break up a form of monopoly power that Sony had exercised. In this case, the consumer was given an option through reverse engineering. But given the result of this case, it is only natural that Sony wants more control, as they seek to eliminate any potential competition. Denying backwards engineering in this case would have given Sony a copyright on ideas and theories. The thought of any company owning an “idea” is scary indeed.

The other submission of note comes from Time Warner Inc. For one, mention is made of Content Scramble System (CSS) being a method by which access is controlled. To clear up this issue, I pose the question: To what does CSS deny access? And, I answer: CSS does NOT stop unauthorized copying, as a DVD disk can be copied bit by bit to obtain a copy as good as the original. To date, CSS has not stopped anyone from copying anything. If the work in question can still be easily copied, even with CSS, how does this amount to access control?

In short, I don't deny that those who create a work should have some control in how it is used. However, too much control stifles public domain and public sector advancement. In this day and age, a product rarely comes to market as good as it can be. It is only through allowing others to dissect and analyze something that it gets better. Knowledge belongs in the hands of the people. To allow a handful of parties to control ideas and concepts is to submit the masses to the whims of the few.