

Jeffrey D. Stanton
3 Ridgewood Parkway
Denville, NJ 07834
Tel: (973) 625-1076
e-mail: jstanton@iname.com

Mr. David O. Carson
Office of the General Counsel
Copyright Office GC/I&R
P.O. Box 70400
Southwest Station
Washington, D.C. 20024
Sent via email: 1201@loc.gov

March 31, 2000

RE: Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

Mr. Carson:

I am writing you today to express my opinions on the Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies. I feel that such copyright protection systems contradict the nature of intellectual property laws in this country as provided for in the Constitution. I also would like to express my agreement with the arguments expressed by the Electronic Frontier Foundation in Comment #204 submitted during the initial comment period (February 17, 2000).

As you are well aware, the Constitution provides for the protection of intellectual property in Article I of the Constitution, which states, "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." The doctrine of "fair use" subsequently was established to reinforce the clause "promote the Progress of Science and useful Arts." Uses of a protected work that were considered fair use included excerpting works for criticism or education and nonprofit archiving of works. Fair use has existed as a balance of the rights of intellectual property owners and the rights of the public to which the owner offers a work.

Copyright Protection Systems for Access Control Technologies do protect intellectual property owners' rights, but they do so at the expense of fair use. Works that have Access Control Technologies, currently including Digital Video Discs (DVDs) protected by the Content Scrambling System (CSS), allow no fair use at all. Excerpting a DVD protected by CSS for educational or critical uses is impossible, and the balance of fair use no longer exists.

Being a technological measure, any kind of Access Control Technology, including CSS, can be circumvented. Circumvention of such measures would allow fair use to be expressed once again. However, the Digital Millennium Copyright Act (DMCA) forbids the distribution of any kind of tool that allows fair use.

As a writer and programmer, the vast majority of value I have created in my lifetime has been intellectual property. I understand the necessity of protecting one's own intellectual property. As a citizen of a free society, I also am aware of the need to allow fair use of intellectual property. No intellectual property owner is ever granted complete control of a work that is offered to the public. By unilaterally prohibiting circumvention of Copyright Protection Systems, an intellectual property owner may exert complete control over the work, even after the work is sold. The creator may specify what kinds of equipment on which the work may be displayed, as is the case with licensing of DVD player hardware and software by the Motion Picture Association of America (MPAA). Such control violates the "first sale rule" established by the courts, which limits the creator's control of a work after it is sold.

I once again give my full support to the arguments presented by the EFF during the original comment period in addition to the ones presented above. I also thank you for giving me the opportunity to provide input as you try to formulate your recommendations on whether fair use of certain classes of works are, or are likely to be, adversely affected by such prohibition.

Sincerely,

Jeffrey D. Stanton