

This is a comment in response to docket no RM 99-7, on 37 CFR part 201
"Exemption to prohibition on circumvention of copyright protection systems
for access control technologies"

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Since I write only as an individual, my title and etc. are not relevant, and of course do not reflect the position of any commercial interest for which I work.

My chief concern is that encryption of copyrighted works is a major violation of fair use. In the past, most works were distributed in clear-text, and after expiration of copyright, public use and copying of the works was both possible and encouraged.

This is the traditional bargain of copyright holder vs. public. The copyright holder is granted a temporary monopoly in return for eventual free public use of the work.

Equity requires that persons encrypting copyrighted works make possible their decryption when the copyright expires. Otherwise, there can be no public interest in providing a copyright to the authors of such a work. Instead, their commercial interests are adequately protected by technical means, and since there is no promise of public benefit, there can be no public interest in enforcing copyrights on these works. Therefore, no copyright exists on such works, and on the face of it, 37 CFR part 201 therefore does not apply to such works.

Therefore, since prohibition of means of decryption violates equity, the state should not forbid or interfere with the lawful development or application of such decryption programs or devices. (which might initially be to provide clear-text backups of the works). These are necessary to free future scholarly and public use, the presumed eventual public good of copyright. It may be in the best interest of commercial concerns to develop and release such programs to protect their copyrights.

Further, it seems to me that the public interest requires limiting the security of the encryption used for copyrighted works, to assure that such programs or devices are possible.

Further, if an attempt is made to protect commercial interests with encryption of copyrighted works, without protecting the public's right of use, this attempt indicates negligent or malicious intent to prevent eventual public use. It therefore voids the equitable basis of copyright to that form of the work, and 37 CFR part 201 therefore does not apply to that form of the work.