

21 January 2000

Librarian: We seek to comment on section 1201(a)(1) of the Copyright Act, 17 U.S.C. 1201(a)(1), "Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies" with regard specifically to the class of copyrighted works known as DVD (Digital Versatile Disk).

We are writing to argue that United States citizens have the right to view any DVDs which they can lawfully access, even if they find it necessary to reverse engineer the DVD encryption algorithm or use software that is not licensed by the DVD Consortium (such as DeCSS). We believe the following points support this argument:

1. DVD encryption is not a copy protection mechanism, as it does not prevent DVDs from being copied nor does it prevent such copies from being viewed. Rather, it prevents the playback of DVDs on players which cannot decrypt the data. Since DVD encryption is not a copy protection mechanism, it is not covered by the Digital Millennium Copyright Act.
2. DVD encryption hinders access to material whose copyright has expired or is not in force for other reasons. While the duration of all copyrights is limited by law, restricting legal playback to players licensed by the DVD Consortium would effectively create a permanent copyright.
3. Without reverse engineering, existing DVD players would be restricted to those sanctioned by the DVD Consortium. That would prevent the legal use of copyrighted works in many circumstances. Here are a few:

- Use on a computer system which has a DVD drive, and uses one of the many operating systems for which no player licensed by the DVD Consortium exists (such as Linux, BSD, OS/2, and Solaris, among others).
- Use by a person or organization who wishes to maintain a secure computer system by using only software whose source code is available, so it can be audited, such as DeCSS.
- Use by a person or organization who wishes build or program their own player but does not have a license from the DVD Consortium.
- Use by a person who wishes to view DVDs in the future when DVD is no longer in common use.

In order for copyright to be a respected institution in our society, it must be feasible for a person to legally view copyrighted material. We think these arguments demonstrate that this is not currently the case for DVDs. We think that software such as DeCSS is a reasonable and legal solution to this situation.

In a broader perspective, we think that the Digital Millennium Copyright Act puts up an unreasonable barrier: it should not be necessary for a citizen to go to the Library of Congress to plead his case before circumventing mechanisms such as DVD in order to exercise his rights regarding copyrighted works.

Thank you for considering our argument,
Anthony Carrico, Renee Johnson