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Re: Comments to the Librarian of Congress regarding exempting certain classes of works from the prohibition against circumventing a technological measure that controls access to a copyrighted work.

#### **OVERVIEW**

It is my belief, and one shared by most Americans I think, that when a person purchases a copyrighted material, they have a right to access that material without restraint or additional fees. However, the Digital Millennium Copyright Act (DMCA) is being used in some cases to unfairly restrict consumer fair use of legally purchased copyrighted materials. Specifically, DVD movies are encrypted by a method known as Content Scrambling System (CSS) devised by the DVD Copy Control Authority (DVDCCA) for the Motion Picture Association of America (MPAA). DVD movie discs are only playable on DVD players manufactured by companies that have paid a licensing fee, and who, in turn, have been provided with a decryption key to unscramble the DVD contents. If the CSS only prevented unlawful use of the copyrighted contents this would be fair enough, however, it most often prevents legal noninfringing access to the contents. This, I believe, adversely affects consumers and others for the reasons briefly outlined below, specifically with regard to computer DVD players.

#### **MPAA TAX**

Even when using an operating system such as Windows 98 for which DVD players are available, without access to the copyrighted data on a legally purchased DVD other than with a licensed DVD player, the end user ends up paying an MPAA tax in the form of large MPAA licensing fees paid by the DVD player manufacturer, and the MPAA or the DVDCCA effectively maintains a monopolistic control of DVD players. It is only fair for an end user purchaser to have access to the copyrighted material that he or she paid for without paying additional fees for a licensed player. No reasonable person would find it acceptable to purchase a book only to find that the words were encrypted and that a licensed reader must be purchased to read the book.

#### **MICROSOFT TAX**

The situation is even worse for users of alternative operating systems such as the now popular Linux. A Linux user will quickly find that no DVD players have been made available for Linux and, in this case, the end user must pay another Microsoft tax (in the form of purchasing an unwanted Microsoft operating system) in order to have an operating system that supports available DVD players. I'm not suggesting any collusion between the MPAA and

Microsoft, however, the unfair copyright restrictions enforced by the MPAA and their monopolistic control of the DVD player market work to the advantage of Microsoft and are clearly harmful to suppliers and users of alternative operating systems.

#### **FAIR USE ENABLEMENT**

Providers of programs that provide fair and legal access to purchased copyrighted DVD movies, such as the now famous DeCSS source code, should not have to live in fear of retaliation from groups such as the MPAA and the DVDCCA. The Digital Millennium Copyright Act was not intended to eliminate the fair use rights of the consumer, and it was not intended to be used as a terrorist tool against those who enable that fair use. I am a Linux user, however, I would somehow feel like a criminal if I were to purchase a DVD movie and play it on my Linux system, as would many others. This, in itself, adversely affects a large number of people if they are not granted the ability to make noninfringing uses. They should not be prohibited from circumventing technological measures controlling access to copyrighted DVD works for noninfringing uses--they paid for the movie, they should be able to view the movie.

#### **EROSION of CONSUMER RIGHTS**

DeCSS was written only to enable user's of Linux or other alternative operating systems to view lawfully purchased DVD movies. However, it is a very alarming fact that, under restrictions set forth in Digital Millennium Copyright Act, the MPAA doesn't even have to prove that DeCSS has ever been used to make illegal copies in order to criminalize possession of the code. All that's necessary is to show that DeCSS could possibly be used to circumvent controls limiting access to copyrighted matter. So legally purchased DVD owners become criminals for viewing their own discs if they use DeCSS to view those discs or tell others about DeCSS. This is an unfair shift of power from lawful consumers to corporate copyright owners. It is also unnecessary as the home videotape recorder has proven. Instead of destroying the film industry, a whole new industry sprang up to support the film industry, namely the multitude of VCR movie rental companies that prosper and feed fortunes back into the movie industry. The book industry is another industry that flourishes in spite of inexpensive copiers. We shouldn't have laws criminalizing lawful activities "just in case" a few might be able to ignore a copyright.

#### **CONCLUSION**

The DMCA, as written, potentially makes all of us criminals, exposing each of us to the risk of an unjust, punitive and destructive prosecution at the whim of a corporate executive. While the Librarian of Congress doesn't have the power to change the law, perhaps the potential harm inflicted by the law can be muted by exempting classes of works that are of importance to the populace at large, not just DVD movies but also any digital information that is targeted for or important to the consuming public. Please make this a friendlier world to live in.