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Office of the General Counsel  
Copyright Office  
Library of Congress

To the Librarian of Congress:

The Digital Millennium Copyright Act clearly violates the fair use principle for all copyrighted works in digital form. The Digital Millennium Copyright Act makes no provision for fair use when prohibiting circumvention of copyright protection systems and hence clearly obstructs fair use of *any* copyrighted work. Users of *every* class of works are likely to be “adversely affected by virtue of such prohibition in their ability to make non-infringing uses” of those works.

The fair use principle has a long and respected history, and its advantages have been firmly established. When I obtain a copy of a copyrighted work, I have the right not only to view and enjoy the copyrighted work, but also to make copies for “criticism, comment, news reporting, teaching, scholarship, or research,” among other purposes.

It often takes a panel of judges, two teams of lawyers, and several months, if not years, to determine fair use; a simple “technological measure” cannot possibly be expected to determine fair use. Since non-infringing copy protection cannot distinguish between copying for fair use and copying for unfair use, non-infringing copy protection effectively stops all copying of works, even copying for fair use. For instance, the Macrovision copy protection technology unconditionally stops DVD-to-VCR copies, regardless of whether they qualify as fair use; no consideration is even given to fair use. Nearly every other copy protection scheme on the market today and in the foreseeable future makes the same error, stopping copying of works under any circumstances, even those of fair use.

It is not within the rights of the copyright holder to stop fair use of his work. When the copyright holder transfers a copy of his work, the recipient has the right to fair use of that work.

It is not within the rights of the copyright holder to stop fair use of his work, and it *certainly* is not the place of the government to *support* the copyright holder in stopping fair use of his work. This is what the Digital Millenium Copyright Act does; by outlawing circumvention of “a technological measure that effectively controls access to a work protected under this title,” it now becomes not only difficult to achieve fair use by circumventing the copy protection, but also *illegal* to achieve fair use!

Until a “technological measure” can determine what constitutes fair use and what does not constitute fair use, any such measure inevitably impedes fair use and adversely affects non-infringing uses of works protected by such measures. I urge you to except from the prohibition in subparagraph (A) of §1201 the class of works copy-protected by “technological measures” that do not distinguish fair use from unfair use.

Thank you,

Daniel J. Peng