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I think that the problem with the DMCA and "non-infringing" technologies is that it is that "controlling access" to a material and protecting one's copyright are not entirely the same thing. Certain things (DVDs, CDs, etc) have a mechanism by which someone can make copies that break the copyright, but in addition they also have a mechanism by which they can be used by their owners which can be separate. In cases where a technology is necessary for legal use, but has some potential (but is not required) for breaking copyright, use of this technology should be protected. For example, at some point decryption is a necessary part of playing an encrypted DVD, but decryption is not \*required\* for making an illegal copy.

I am not sure whether limiting certain classes of media from the DMCA entirely is necessarily the best answer. It would probably be better to make the law explicitly protect both the copyright holder and the buyer of copyrighted material. In the short term, limiting the classes may be necessary, and I believe that the test above is a reasonable test to see whether or not a technology should be covered by the DMCA.