

As a staff member of Texas A&M University General Libraries, speaking on my own initiative, an avid user of the Linux operating system, and big movie fan, I would propose that movies in general (and movies on DVDs in particular) be excluded from coverage by the clause under discussion.

As I'm sure some people at your office are aware, there has been much controversy recently involving the reverse-engineering of the CSS "copy protection" mechanism owned by Toshiba and other members of the DVD consortium; the issue of whether or not this feat of reverse-engineering was legal with regard to trade-secret law is currently before the courts; the issue of whether or not it is legal under the DMCA should never arise.

It should never arise because watching a movie in your home, if you have purchased a DVD and licensed the movie on it in order to do so, is a non-infringing act. Even if you watch said movie using a player not approved by those who sold you the DVD, it is a non-infringing act, at least with regard to the movie.

And that is the crux of the matter. No one produces a DVD movie player application for Linux, and with the DVD consortium's exorbitant licensing fees, no one is likely to in the near future. More importantly, the nature of the licensing agreement insures that there will never be a free (in terms of price or source code availability) DVD player for ANY operating system, unless it is produced by the subversion of the "copy protection" mechanism.

Given the growing popularity of both Linux and free software, I believe that this demonstrates a significant example of a non-infringing use of a work which is not possible without subverting the "copy protection" mechanism.

On a side note, you may have noticed that I have put quotes around the phrase "copy protection" whenever I refer to CSS; I do so because CSS does not actually do anything to prevent the copying of DVDs, as many residents of, say, Hong Kong can certainly tell you. What it does is impose an undue burden (the need purchase a proprietary operating system and proprietary software) on the owner's use of a copyrighted work. For all of these reasons, DVD-based movies (and other movies distributed using similar schemes) should be exempted from the prohibition being discussed.

Thank you,

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