

Dr. Ruben I Safir

1600 East 17th street

Brooklyn, NY 11230

1-382-5752

ruben@wynn.com

Comments On

Digital Millennium Copyright Act, Public Law 105-304 (1998)

In light of the passage of Digital Millennium Copyright Act, Public Law 105-304 (1998)

the Copyright office is now going to have to determine rules for the application of the new law which will impact the daily lives of all US citizens. In an effort to protect the holders of the limited privileges of Copyrighted Cultural artifact, Congress has tried to create a legal basis for the use of technology to help the granted rights to Copyright holders. This is an admirable undertaking by the Congress in that it assures reasonable control of original authors to profit financially from the Cultural Artifacts which they created.

However, Congress and the Courts have consistently upheld the principle of "fair use". In fact, the US Constitution was so concerned about the obvious conflict of interest of public discourse, political freedom, and the effort to give creators limited exclusive licenses to Cultural Artifacts of their creation as a measure of fairness for their efforts at enriching our shared cultural inheritance, that they included the right of Congress in inhibit free speech by issuing limited Copyright and Patents protections into the Constitution.

Furthermore, the courts have tried to uphold the balance of these conflicting interest by applying the legal concept of "fair use" as outlined in several court cases including the now famous cases following the advent of inexpensive video tape recording and playback technology. Congress further attempted to define the natural the

rights of individuals to usage of Copyrighted material with USC 1201(a)(3) as noted in the Notice of calls for comments of the DMCA in the Federal Register.

The question needs to be answered if Congress, in passing the DMCA, actually intended to alter the balance of the rights of individuals to use legally obtained Copyrighted Cultural Artifacts, and those who own the limited licenses under Copyright Law to those Artifacts. Nothing I've read in the Act, as passed, seem to indicate that Congress intended to make any change in the status quo in this regard. Further, it would be a question for the Courts to decide if Congress actually has the power to infringe upon the individual rights of people further than the Constitution explicitly allowed by extending any legal device which impairs "Fair Use" Doctrine.

It seems that if the Copyright Office or other Federal Agency chooses to strictly enforce many of the segments of the DMCA as it is written, that the effective outcome of these ruling would be adding questionable restrictions on individual liberty, and even threaten the foundation of an open society, upon which the basis of our Democratic form of Government relies.

Specific examples of this include rules which would make the dissemination of information which encourages the "Fair Use" of any copyrighted material, protected with the use for a DMCA inspired technology or not, such as the elimination sharing Computer code which makes legally obtained media possible to read on devices or software other than those disseminated or approved by the holder of a Copyright. Individuals should have the explicit right to reverse engineer, and to make the information available for how it was done, for the purpose of using a legally obtained media on non-commercial operating system of hardware Computer platform. It Copyright Office should also make it clear that the use of DMCA covered devices or software does not give the Copyright owner the right to dictate how, where or when the user can view the legally obtain media, or other Copyrighted material. To do otherwise, the Copyright Office would be allowing the Copyright holder, usually a large multinational corporations, undue influence on the free access of information which our society depends on.

Key areas that warrant specific protection would be Copyrighted granted Cultural Artifacts such as the BIOS of a computer which might make it impossible to run an Operating System other than an Operating System

which the holder of the Copyright BIOS makes a prearranged agreement. For example, if my PC have an encrypted BIOS's which needs to be decrypted for the computer boot, and only Microsoft is given encryption keys to read the copyrighted BIOS, it would be impossible for any other OS vendor to create an Operating System for that hardware, even though the purchaser of the Hardware is the holder of the license to use the Copyrighted BIOS, and should have a choice to use any Operating System that they choose to create or obtain which is compatible with the hardware. A strict interpretation of the DMCA, in this case, can destroy the Open Source Software project, and remove the Linux Operating System Kernel from the Desktop PC.

And the same holds true for all kinds of peripheral hardware devices. If the key to access encrypted media is not bundled directly with the media, and developers are prevented from reverse engineering devices, writing decrypting algorithms, publishing them for public access, then CDROM's can become useless for anyone not using the commercial system of the copyright holder's choice. Hard Drives, DVD media players, sound devices, electronic newspapers, school text books and any other devices yet to be invented are threatened to be freely accessible even after legal purchase or a license to use a Copyrighted media.

The Copyright Office needs to be clear that reverse engineering and publication of the results of such efforts for the purpose of innovating new technology to be interoperable with readers of such media is not illegal. And further, the same rights are granted for the purpose of developing new devices to read the media, and to even permit the usage of old devices not designed to read the media to be created.

Ruben I Saifr