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Comments on the Digital Millennium Copyright Act

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I am an entrepreneur who wishes to completely re-engineer broadcast radio in order to serve the general market. The entire radio broadcast industry is based on a model that met the needs of people over a hundred years ago. Today, the market demands choice, demands control, and demands it now.

As proof, consider that the sole reason records, tapes, and CDs actually sell is because people are not able to receive such goods in an acceptable manner over the radio.

Now consider a service that allowed people to listen to whatever they wanted, whenever they wanted, wherever they wanted. Indian music? No problem. First three tracks off the Beatles last album? Done. Comedy sketch by Eddie Murphy in his Raw concert? At your service. On demand, promotionals, pay-per-view, advertising-driven, or subscription-based.

Now, many models exist in which this would be acceptable to artist and to consumers -- models in which consumers (or advertisers on their behalf) would pay the artists for the fair use of their materials. For commercial-free listening, consumers could naturally buy tracks or CDs or MP3s. Everyone gets paid, and consumers get what they want.

The fly in the ointment, however, is that the DMCA makes it impossible (although not illegal) for anyone to do this. Because it requires INTERACTIVE MUSIC SERVICES to make individual deals with every single artist it wants to utilize, it is not possible for any

interactive music service to meet the demands of the market in the way in which I have described, despite the fact that this methodology not only meets -- but exceeds -- the demand, and would, I believe, result in artists receiving more money and therefore encouraging expression through art.

Instead, this part of the DMCA protects the music labels. These labels, faced with the prospect of being completely removed from the picture by a combination of social change and technology, have come to you with this suggestion on "how to protect artists" -- but as I have shown, it does not protect artists -- it protects music labels who can now run radio stations and sell music the way they always have: with a model over a hundred years old that prohibits new technology and social change from modifying the format so many people desire modified.

Congress should legislate for the people -- and this is clearly legislation for an industry whose concern is neither for the people it represents nor the consumers who must deal with it in order to satisfy their demands for music and other audio and video works of art.

For example, the copying of a work of art should not be illegal. Indeed, where is the harm? What SHOULD be illegal (and better enforced, I believe) is the act of **DISTRIBUTING** a copy of a work of art. Such an act definitely harms artists and therefore harms consumers.

The primary problem is that "copying" is viewed as bad when it is in fact a **REQUIREMENT OF THE NEW SOCIAL CHANGE AND THE NEW SET OF TECHNOLOGIES WHICH MEET DEMANDS!** In order for me to purchase a work of music and listen to it at home, in my car, at work, and on the plane -- I would have to carry around a physical CD with me everywhere, along with a CD-player. **OR**, as the labels would have it, I'd have to purchase a copy of the CD for every single place I want to listen to it so as to avoid the painfulness of carrying it around. If you don't believe this is a problem, consider the need to listen to a wide variety of music -- let's say 750 CDs worth of music -- in all those places. Technology makes restrictions on the consumer here that the consumer no longer wishes to put up with. In fact, many of the new technologies are targeting this need directly -- My.Mp3.com for example, lets you put your music online so that you can retrieve it anywhere an Internet connection exists. In order to do this, **A COPY OF THE MUSIC MUST BE MADE, EITHER DIRECTLY OR INDIRECTLY.** In order to meet technology demands, such as load balancing for performance or clustering/mirroring to prevent loss of service, **A COPY MUST BE MADE.** But nobody actually profits from the copy being made -- in fact, they are still distributing only a single value: the ability to listen to the music the consumer paid for.

In short, the following are an unfortunate and misguided attempt to protect consumers, and only harms them while providing an old and unchanging industry with unnecessary protection:

\* Placing restrictions on copying rather than the distribution of copies for the purpose of circumventing **PAYMENT TO THE COPYRIGHT HOLDER**

\* Requiring interactive music services to make deals with individual artists rather than a consortium of artists means that interactive music services will continue to languish at the hands of the radio and music industry.

I thank you for your time, and I pray that you will uphold your duty to the people rather than an industry. In doing so, you will encourage a new generation of products and services and greatly, greatly enhance the financial incentives that drive the artists' industries.

Sincerely,

Daniel E. Rudman  
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