

Comment on circumvention, February 17, 2000

Carl Fleischhauer, Technical Coordinator, National Digital Library Program
David A. Francis, Chief, Motion Picture, Broadcasting, and Recorded Sound Division
Library of Congress

PREFACE: The following comment is from staff of the Motion Picture, Broadcasting, and Recorded Sound Division and the National Digital Library Program at the Library of Congress regarding the prohibition on circumvention of technological controls on access to copyrighted works. This comment pertains to the rulemaking regarding circumvention discussed in 64 FR 66139 and in the “Copyright Notices” newsletter for December 1999 (page 3). The rulemaking is associated with the Digital Millennium Copyright Act and is intended to determine if there are classes of works whose users are, or are likely to be, adversely affected in the user’s ability to make non-infringing uses if they may not circumvent technological measures.

COMMENT: The Library of Congress audio-visual-collection preservation team believes that it may be necessary for the Library to circumvent technological controls on access to copyrighted works in order to preserve digital audio-visual works for the long term. Such preservation of audio-visual materials has always been part of the mission of the Library and other legitimate research archives, and the process has always entailed copying. For example, older sound recordings on wire reels and magnetic tape formats have been copied into new formats as the historical wire recordings and magnetic tapes deteriorated or were determined to be likely to deteriorate. The staff charged with the responsibility for preserving audio-visual collections foresees that digital content will also require copying for preservation. For example, as a compact disk begins to show signs of deterioration, the digital signal on the disk must be transferred to other media to avert loss.

The Library has not made a definitive study of the copyright protection technology in use or proposed for use in digital sound recordings, DVD disks, and other formats. Coverage in the press indicates, however, that several protection technologies are designed to prevent copying or repeated copying in certain circumstances. This may mean that it will necessary for the Library and other legitimate archives to circumvent protective technology in order to preserve important content for the future.