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This is a comment on the rulemaking related to the Digital Millennium Copyright Act.

I comment as an individual software designer whose current employment is unrelated to the matter at hand, and as an individual consumer of copyrighted works.

I suggest you consider inclusion of the following exceptions to the DMCA in your rulemaking:

First:

In any circumstance where an act, such as making a copy of work or examining its content, would be legal had the work not been technologically protected, defeating a copyright protection system to commit the otherwise-legal act shall be excepted from the DMCA.

This exception is intended to protect fair use, viewing of copies of works (such as DVD movies) owned by the viewer, copying works whose copyrights have expired, making legitimate use of works whose protection is misconfigured, and otherwise prevent the accidental creation of a new proprietary right to works, similar to but exceeding that of copyright.

Second:

Because tools to defeat technological protection have legitimate use due, if nothing else, to the first exception above:

Reverse-engineering copyright protection systems and creating, possessing, trafficking in, or using copyright protection system defeating tools shall be presumed to be for legitimate purposes. Those trafficking in or otherwise supplying such tools shall be presumed to believe that the recipient of the tools intends to use them for legitimate purposes. These presumptions may be rebutted only if it is shown that the perpetrator knowingly and premeditatedly used the tool to violate a copyright or knowingly and

premeditatedly engaged in a conspiracy with another to violate a copyright. In the absence of a successful rebuttal of the presumptions, the above acts are excepted from the DMCA.

This exception is intended to protect a number of legitimate acts, including writing and distributing DVD viewers and other tools for otherwise unsupported platforms, advancing the state-of-the-art in copyright protection tools, and enabling the defeat of protection means for the legitimate purposes of the first proposed exception.

It is also intended to prevent the accidental creation of a new proprietary right to copyright protection technology, similar to patent, but exceeding patent's scope and requiring less innovation and less government scrutiny to acquire.

thank you
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