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The Digital Millennium Copyright Act (DMCA), as I understand, was passed for the purpose of protecting copyrighted works from unauthorized duplication. However, the law as written has several side effects that effectively give copyright holders rights that they would not have without the DMCA.

I will use DeCSS as an example to discuss an effect of the DMCA that does not relate to unauthorized usage of copyrighted works and may infringe upon the rights of owners of such works. Data stored on DVD's are encrypted using CSS to control access. In order to create a player capable of decrypting a dvd, one must pay for a license to use the technology. In the preliminary injunction awarded to Universal City Studios on January 20, District Judge Lewis A. Kaplan was clear that he considered DeCSS to be in violation of the DMCA regardless of its intended use, stating in part, "even if DeCSS were intended and usable solely to permit the playing, and not the copying, of DVDs on Linux machines, the playing without a licensed CSS 'player key' would 'circumvent a technological measure' that effectively controls access to a copyrighted work and violate the statute in any case." By this interpretation of the law, the MPAA is granted monopolistic control over DVD players under the DMCA. This demonstrates that it is possible to be in violation of the DMCA without infringing on the copyright of the work (the DVD). Since there are currently no licensed DVD players under Linux, the DeCSS project's source code has been used as part of a player that is in development, called Livid (see <http://www.opendvd.org>). A Linux user may use this program to play a DVD without copying it. It may also be worth noting that a DVD's large size will make it difficult for one to transfer its content over the internet, regardless of the encryption. For this reason, I would consider DeCSS more useful as a part of a DVD player than as a tool to facilitate duplication.

It would also appear that the legal precedent would not support banning a piece of technology because it may facilitate piracy as long as the technology has other uses. An EFF article (<http://eff.org/effector/HTML/effect12.04.html#dvd>) discusses the case of Sony Corp v. Universal City Studios, stating that

"the Supreme Court ruled that if VCR's have even a single non-infringing use, they cannot be banned." It is clear that source code to bypass CSS has a non-infringing use in the same way that a VCR does.

Hope these comments have been useful.