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The following is a reply comment to the EFF's posting about the DeCSS case. It emphasises support for the EFF's position in that the DMCA takes away a broad range of personal rights, setting new precedents in the denial of important intellectual freedoms. This comment draws an analogy to the only precedent that I am aware of: the criminalization of electronic circuits, and in particular, to circuits that, when used, cause no injury to individuals, and uncertain, arguable, marginal injury to corporations. The circuit precedent is just plain wrong, and the DMCA further encroaches on this hitherto pristine set of individual intellectual liberties. I believe this encroachment is morally and ethically wrong, crossing boundary that must fundamentally remain uncrossed. It will defacto turn many ordinary Americans engaged in ordinary activities into criminals. The situation is dire, and all too easily culminates in a Soviet-style 'guilty-until-proven-innocent' attempt to control individual mental and intellectual activities and the verbal and written expression of those activities.

--linas

DeCSS: Consumer Politics in the 21st Century

The DeCSS debate is a legal, political, and nascent public-relations battle currently being waged by the media industry conglomerates against Joe Average Consumer. At stake is are important issues of personal liberty and intellectual property rights that will have repercussions for centuries to come.

The Fight

In one corner of the ring, we have a lithe-footed, extremely clever, and well-muscled media industry. Born to the world of capitalism,

companies big and small struggle to make profits. Big companies frequently get very good at this, and in efforts to further gain and protect their profits, they easily over-step legal, moral and ethical boundaries.

In the other corner, we have an immense, if somewhat dim-witted and lumbering giant called 'We the People'. Incredibly powerful, in the end, it usually wins the fight, even as it absorbs KO's in every round. Or so has been the case up till now, at least as far as historians are willing to talk about it.

The struggle between large corporations and the common man is an old one, and many have fought in the ring: cigar rollers unions, Standard Oil, Luddites, Saboteurs, Robber Barons, Marxists and Leninists. The battles have shaped the world we live in. To this day, they continue, even as belief in the virtues of unbridled capitalism struggles to take hold in Europe, Asia and Africa. Even in the US, the WTO riots point to a spiritual theme that rejects consumerist mass culture.

The Intellectual Playground

I am particularly drawn to the DeCSS battle because it ties together some very interesting intellectual rights questions that are important and will become increasingly more discussed in the virtual (platonic) world of the noosphere. It is clear that the noosphere will be the defining reality of the 21st century; or in plainer terms: the Internet revolution is upon us.

I remember the considerable shock and amazement I felt when I first learned that there are certain electronic circuits that are illegal to create. As a teen, I fiddled with electronic circuits endlessly, and it never occurred to me that some could be (made) illegal. If you'd asked me at the time, I would have said that its like making certain thoughts illegal: raised in America, this notion was absurd. The shock of discovering that some electronics are illegal helped radicalize me. I was imbued in the culture of Communist Eastern Europe, and the preciousness of personal intellectual rights is more apparent to me than to many, and in particular, to those who have benefited because they can take such rights for granted.

The illegal electronic circuits are variously called 'blue boxes', 'red boxes', 'black boxes'. They are very simple electronic circuits that could hijack telephone switches of the 1970's, and

allow the user to get free long distance or do other interesting things. Of course the telephone company didn't like this one bit, and it worked with its congressmen and representatives to pass laws that made possession of such devices highly illegal, with prison sentences comparable to those for murder. Murder? It was unimaginable. To me, drawing an electronic blueprint is like talking: its a natural form of communication, a means by which one expresses the ideas in ones head. I'd been doing electronics since before kindergarten, I was learning its nuances even as I learned English. To discover one day that certain expressions in my Mother Tongue are illegal because Ma Bell helped make it so was stunning, astounding, flabbergasting, jaw-dropping, apoplectizing. A wake up call, a call to arms.

In some ways, one might argue that I shouldn't be surprised: owning dynamite, at least without a permit, is illegal. I can understand this: dynamite can hurt other humans. Operating a motor vehicle requires a permit: drivers can injure pedestrians. Possession of nuclear, biological or chemical weapons can introduce you to people who throw away the keys. Understandable.

But owning an electronic circuit that maybe hurts corporations? Something that doesn't actually kill anyone, but that possibly causes economic damage, if enough people used it? And that economic damage being rather abstract and arguable? Its not like any profits would have needed to be restated in the annual report or anything. It most certainly is not like any other human being actually suffered pain of any sort, a missed promotion, a pay cut or anything.

Personal Liberties and Freedoms in Cyberspace

I think the criminalization of certain electronic circuits set a heretofore unknown precedent: individuals can loose a freedom of expression when that expression involves a certain form of electronic circuit, even though that circuit in and of itself does no damage to any real, physical, or virtual object or item. Even if the use of that device in the singular does not cause a loss of profits, and at best a marginal loss of utility. Its a precedent that I believe needs to be challenged and over-turned on the grounds of fundamental human rights. Actions such as this must not be proscribed: its an intellectual boundary that is crossed at great peril to the future of free debate and expression of ideas. Its a defining concept whose gravity and importance will come to be realized in the next

century.

In the DeCSS battle, we have a very similar situation. Large corporations employed some truly brilliant and visionary lawyers and executives who worked with elected officials to craft into law similar restriction long before any common slashdot reader got a clue of what was going on; viz. a section of the copyright law that provides that no person shall offer "any technology, product, service, device, component or part thereof [that is] produced for the purpose of circumventing a technological measure that effectively controls access to" a copyrighted work.
[Digital Millennium Copyright Act]

In other words, the Digital Millennium Copyright Act (DMCA) is abridging individual rights not just on a few electronic devices, but something far broader. By using DeCSS, I cause no direct or indirect damage to any individual or corporation. I cause no economic damage either. Thousands or millions of users could use DeCSS without in any way hurting anyone or anything. Yet, my rights to express certain thoughts are being challenged because the media industry fears a few intellectual property pirates. I am not a criminal, and I'll be damned if the DMCA turns me, and millions of others, into one.

You prosecute the man or woman
Who steals the goose from off the common,
But leave the larger felon loose
Who steals the common from the goose.

(traditional rhyme, as quoted from a 1910 publication:
http://www.dur.ac.uk/~dcs0mpw/gkc/books/whats_wrong.txt

Consumer Politics

In the end we return to the battle for the eyeballs and the wallets of the consumer. The laws of capitalism when set to application in the publishing industry results the creation of mass media. Mass media is the publishing equivalent of the industrial assembly line: expensive manufacturing plants where expensive movie moguls work to mass produce cheap mass-market consumables, which in turn produce mass profits. Its a simple equation. Its also a political tyranny, an enforcement of pedestrian tastes on ordinary people who, like you and I, live unaware of the forces that have shaped our world. Its unlikely that

our consumerist culture will shake off the need for worldly goods; indeed, it seems far more likely that we'll shake off our rights and freedoms as we sit in an entertainment stupor. And this bothers me.

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