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Comments regarding exemptions to the anti-circumvention provisions of the Digital Millennium Copyright Act by the Librarian of Congress

#### 1. INTERACTION BETWEEN THE LIBRARIAN AND THE MARKETPLACE

When granting exemptions, the Librarian should not simply respond to the current marketplace for digital works with technological protection; the Librarian must recognize that the nature of the exemptions granted will help to shape the marketplace, and should use this opportunity to encourage technology and business practices that are in the best interest of the American people.

#### 2. OLD WORKS AND PUBLIC RECORDS

In the call for comments, the word "archives" appears many times. Long term access to works for which copyright is still in force is not the only consideration; consideration should also be given to works for which copyright has expired, and public records to which copyright does not apply. For-profit organizations, such as the Genealogical Publishing Co. Inc., and nonprofit groups such as Project Guttenberg, demonstrate the interest in making old works and public records available in digital form. However, it would be easy for a publisher to write a relatively trivial addition to such works, such as an introduction or index, and impose onerous fees and conditions, and technological access protection that prevents unfettered use of the materials, both the public domain portion and the copyrighted portion. Digital technology is more than flexible enough to protect the copyrighted portion while giving unfettered access to the public domain portion, but this is not likely to happen unless the Librarian creates exemptions that strongly discourage the technological protection of public domain materials. I therefore suggest that the technological protection of a body of information may be circumvented by any person if the information consists of at least one-half public domain material, and the copyrighted material must not be material of minimal value that a reasonable person would conclude was included just to avoid this exemption.

#### 3. RESPECT THE RIGHT OF THE READER TO PROTECT HIMSELF AND HIS EQUIPMENT IN A HOSTILE DIGITAL ENVIRONMENT

It is well known that there are malicious people active on the Internet, and the innocent Internet user must protect himself. One of the most widespread methods of protection are virus protection programs. Unfortunately, in order to work, virus protection programs must examine other software on a user's computer, and bad interactions may occur between virus protection software and perfectly legitimate software that a user wants to run. A recent example that I encountered was between Norton Anti-Virus and the personal finance program Quicken 2000. In order to use a work which a reader has properly obtained, and at the same time protect himself from computer viruses, a reader may need to circumvent the technological access control and modify the copyrighted work. I therefore suggest that works that inadvertently or intentionally interfere with reasonable security measures that the reader employs be exempt from the circumvention prohibition.

#### 4. AVOIDING HARMFUL SIDE EFFECTS

In come cases, software may have undesirable side effects. An example is America Online access software. I have had information about other Internet providers, and my personal preference settings, destroyed as a side effect of the installation of AOL access software. Although this software does not fall into the category that the Librarian's exemptions will address, it is easy to imagine that some technologically protected copyrighted works will have adverse side effects. I therefore suggest that technologically protected works that cause adverse side effects on the equipment used to access them, or on any independent information stored on the same equipment, be exempt from the circumvention prohibition.