

Dear Copyright Office,

I believe that the DMCA presents a real threat to the freedom of software developers and, ultimately, consumers. Software developers must always have the right to reverse engineer a technology for the purposes of interoperability. We should be allowed to contract away that right. The Congress should not be allowed to legislate away that right.

Specifically, I would like to respond to comments made by Time-Warner at <http://lcweb.loc.gov/copyright/1201/comments/043.pdf>.

"I am aware of no works or classes of works that have, because of the implementation of technical protection measures, become unavailable to persons who desire to be lawful users."

It should be noted that Linux users have not been able to access DVDs on their computers because of these access protection measures. Furthermore, when the access protection measures were circumvented for the purpose of interoperability with the Linux operating system, the DVD-CCA sued every web site that carried this "unauthorized" DVD player.

I would like to reference the MPAA cases going on in New York and Connecticut. In these cases, the MPAA is attempting to make it a criminal act to distribute a "unapproved" Linux DVD player. If the DMCA is interpreted in a way that sides with the MPAA, consumers, software developers and free speech will all suffer a massive set back.

To illustrate the potential problem with the DMCA, The Linux Journal has illustrated the following examples of legitimate, fair uses of copyrighted material that would be criminalized under the DMCA...

\* A software publisher embeds in its copy-protected code a measure designed to interfere with the operation, on the same computer, of a competitor's products. If the adversely affected competitor includes code in its product that defeats the access-control mechanism to defeat this destructive activity, the competitor will have violated the DMCA--and since the underlying purpose is commercial gain, the federal fines or imprisonment penalties apply.

\* A professor wishes to excerpt a portion of a protected work for the purposes of critical commentary in her classroom. She defeats the work's access-control mechanism so that she can excerpt this section. Even though this action is defensible under the fair use provisions of long-standing copyright law, it is an offense under the DMCA. If all available information were to be eventually digitized and protected by access-control mechanisms, teachers will be unable to share information in the classroom unless they pay fees to copyright holders.

\* A popular music utility is found to collect extensive information regarding the user's listening habits, and uploads this information surreptitiously to a marketing database. Because the utility does not associate this information directly with the user's name, it is protected against circumvention by the DMCA--and that's true even if, subsequently, this information can be linked to the user's actual name through the use of a serial-number matching program. Any attempt to circumvent this type of monitoring is a crime under the provisions of the DMCA.

\* A popular, but access-protected, operating system is found to have gaping security holes, which can be repaired only by defeating the access-control mechanism. A group of security experts creates and disseminates via the Internet a utility that defeats the access control mechanism so that users everywhere can protect themselves. Although the DMCA gives individual owners the right to circumvent the mechanism, any attempt by such owners to develop and distribute a circumvention utility would appear to be illegal under the provisions of the DMCA [see Section 1201 (b), 1]. If such a utility were commercially distributed, the "infringers" would be subject to federal fines or imprisonment.

\* To safeguard confidential information, a company develops an access-control mechanism that prevents unauthorized employees, or people outside the company, from gaining access to this information. However, an employee becomes convinced that the company is engaged in illegal activities. To blow the whistle on these activities, the employee shows an encrypted CD-ROM to a press reporter. They use an anti-circumvention utility to gain access to the potentially incriminating evidence. Learning of this incident, the company sues the employee and the reporter under the provisions of the DMCA, and wins.

These examples were taken from <http://www2.linuxjournal.com/articles/currents/016.html>. The point they illustrate is that the DMCA seriously infringes our freedoms as consumers.

We don't need additional laws to protect copyrighted works. It's already illegal to distribute a copyrighted work that you don't own or have license to distribute. There's no need for further legislation. Especially legislation that goes as far as the DMCA.

I ask that you modify Section 1201 to permit the following:

We should be allowed to reverse-engineer and circumvent access control mechanisms for the purposes of viewing a work through an alternative device (where device could be a piece of hardware or a software-hardware combination).

Sincerely,

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