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Copyright Office
United States Library of Congress

In-reply-to: Time-Warner's comment on section 1201
(<http://lcweb.loc.gov/copyright/1201/comments/043.pdf>)

I will be brief.

First, I concur almost entirely with all the comments of the Electronic Frontier Foundation and the Computer Professionals for Social Responsibility.

Second, I would like to note that Time-Warner's claims are belied by their behavior, and that T-W's comment is filled with blatant slants and outrageous contradictions. For instance, on page 1 they write:

Time Warner is also vitally interested in the healthy maintenance of the "fair use doctrine". Time Warner's ability to rely on it makes possible Time Warner's creation and dissemination of news reports and factual and non-factual textual, audio, video and audio/visual works.

This begs a number of extremely important questions, to wit:

- 1.) Why, if "fair use" is so important to Time-Warner, the access-control provisions of media such as DVD's and their licensed playback machinery make no allowance for fair use;
- 2.) Why Time-Warner has acted, through the RIAA and DVD CCA, to suppress technologies which allow owners of these media to exercise their fair-use rights; and
- 3.) Why, if Time-Warner depends on "fair use", they have acted to make it impossible to exercise without explicit authorization or even special machinery.

This is only a list of questions from one paragraph on the first page!

As an example of a slant, here is a sentence from page 2:

To put it in less technical terms, a fair use defense might allow a user to quote a passage from a book but it does not follow that the user is allowed to break into a bookstore and steal a book.

On the other hand, the "technological protection measures" advanced by Time-Warner are analogous to printing a book in ink which can only be read underneath an expensive type of lamp licensed only to certain producers. The actions of the DVD CCA, of which Time-Warner is a member, are analogous to attacking people who produce filters which allow such a book to be read by sunlight on one's porch; their suit to suppress the DeCSS software is not unlike filing suit against people who tell others how to create such a filter from colored plastic sheets.

If Time-Warner were just one company of many in the market, this would be one thing. However, Time-Warner is part of the DVD CCA, which represents the producers of nearly all films available on DVD. Together, they form a cartel opposed to fair use.

Here are examples of fair use which are impossible under the "technological protection measures" of authorized DVD players (and almost certainly future media formats):

- Quoting. To prevent copying of the whole, they prevent the copying of any part. If I were producing a class on films, I would be in violation of the circumvention provisions if I used software to excerpt a short exchange from both an original work and its remake. Note that there are no protection measures for 35 mm film, so I could make contact prints and audio copies without fear of prosecution.
- Archival copying. I cannot copy the work in such a way as to protect my investment against damage or loss.
- Space-shifting. I cannot make a copy of a work, say, "The Lion King", and allow a 4-year-old to view it while keeping the original stored elsewhere. Even if I never violate copyright by transferring the copy without the original, this violates the anti-circumvention provisions of the law.

Time-Warner has done nothing to address these legitimate concerns of the average consumer. Worse, new hazards to fair use will almost certainly surface under their interpretation of this law.

In closing, I would ask the Copyright Office to give the broadest possible scope to the rights of the consumer under the provisions of this law, and give producers such as Time-Warner no power to restrict, police or prevent activities which fall under historical concepts of fair use. Thank you very much.