

March 31, 2000

David O. Carsons
General Counsel
Copyright GC/I&R
Southwest Station
Washington, DC 20024

Re: Section 1201(a)(1) of the Digital Millennium Copyright Act

Mr. Carsons:

My purpose in writing to you, is to demonstrate that there are classes of works that do not warrant protection from the circumvention of their protecting technologies.

Class, Software:

A company produces a piece of business software. A customer purchases the software, and uses it in their business. For two years, this customer inputs data into the software. For whatever reason, and in the new faster digital age there are many reasons, the company that produced the software goes out of business, taking with it all support for its software. The customer must now move to a new application. But how does the client, without support from the original copyright holder, transfer data from the software? He or a consultant may have to reverse engineer, or circumvent, the protections and structures created by the original company. The data in the software does not belong to the copyright holder, but to the client. But the new DMCA requirements will not only hinder the customer's ability to move the data to a new format, but it borders on the infringement of the customer's own copyrights. In order to gain access to his own copyrighted material, via another vehicle, namely another software application, the DMCA will punish him should he attempt to "circumvent the protections" in the original software creator's work. The customer is a "user of the copyrighted work" and would be "adversely affected" by the "prohibition" or, the inability to reverse engineer the structures, in his attempt to "make noninfringing uses".

Class, Software:

A software manufacture makes claims concerning a particular product. A consumer purchases the product, only to find some discrepancies in the manufacturer's claims. In order to test and verify whether the manufacture's claims are true or false, in regards to the advertisements, he would need to disassemble, or reverse engineer the work. The new provisions of the DMCA would hinder that consumer's legal recourse by limiting his rights of discovery.

Class, Hardware:

A company releases a movie on DVD. A consumer purchases the DVD and it plays in his DVD player. The consumer builds up a large collection of DVDs, generating plenty of income for the company that produces the DVDs. The consumer moves. He finds that because of differences in electrical systems between his original location and his new location, he must purchase a new DVD player. His new DVD player will not play his collection of purchased DVDs. His DVDs are encrypted, and will only work in a player from North America. His new home is Europe, and none of his collection will work. This "user of the copyrighted work" is being "adversely affected" by the inability, the "prohibition", on the reverse engineering, or "circumventing of a technological controlling access" to "make noninfringing uses" of the work.

As an author, of both books and software, I understand the importance of copyright protections. Without these protections, one would have little or no interest in creating novel and unique works. Without these protections, there would be little incentive to delve into hitherto unexplored areas of thought. The digital age affects the authors of books greatly. Not since the creation of the printing press, have we seen such a change in the dynamics of the publishing industry. In a matter of seconds, a new manuscript can be streamed across the internet to millions of readers. The same changes apply to software, motion pictures, and digital images. The speed by which information can be exchanged by lawful and unlawful users alike is phenomenal. Yet, that same speed changes the dynamics of all business. Business cycles and the life spans of technology are also accelerated. We all know of technologies, cutting edge in their time, that have gone by the wayside. Phonographs, once in nearly every American household, now collect dust. These common items, now replaced by audio CDs. Those audio CDs to be replaced by Audio DVD or something even better right around the next moment.

We have no guarantees that any technology will have a particular lifespan. There are no guarantees that software companies will be in business tomorrow, nor are there guarantees that DVD players or other hardware will be supported 2 years from now. The same digital speed that strikes fear into the hearts of movie company and software company executives over piracy, also brings with it unknowns. These executives can't tell us what is around the next corner, let alone tell us what the industries will be like 24 months from now. Without careful consideration, of possibly other additional classes of works, the DMCA may be removing consumer rights in the future. Thank you.

LoboSoft, Inc.
Stephen Feather
President