

I'm writing to comment about the DMCA yet again, having commented before on 1201(a)(1). Unfortunately I don't have the time to produce a full-length formatted message this time, but I'd like to register my objections to the impact of the DMCA upon first sale.

Specifically, in the MPAA vs. 2600 case, brought under the DMCA, the Motion Picture Association of America has tried to stop creation of an open-source DVD player for the Linux operating system. One of the MPAA's claims is that a user isn't "authorized" to view a DVD just because he's purchased a DVD. The MPAA requires that the user get a licensed player; otherwise his attempt to access the work is illegal under the DMCA.

Since a DVD is useful because of its content, allowing the companies to control who can legally access the content on the DVD is effectively equivalent to allowing the companies to control who can legally own the copy, thus interfering with the right of first sale. (Technically, of course, the physical DVD can be still be transferred to another person, but this transfer is useless without the right to access the DVD's content.) For instance, an importer of foreign DVDs who has legally purchased those DVDs should be able to sell them (by the first sale doctrine) to people living in the US. However, the MPAA will refuse to authorize a DVD player without a signed contract that requires that the DVD player only play DVDs from one region of the world. This will make it impossible to sell the DVDs to anyone who doesn't either own two DVD players set for different countries (a vanishingly small percentage of DVD player owners), or own an unauthorized player or a player with the access control circumvented (illegal under the DMCA).

It should be noted that while the Linux player involved in the lawsuit is in an early stage, and Linux is not as popular as Windows, that does not mean that the DMCA claims in the lawsuit affect only the relatively small number of Linux users. If an "unauthorized" software player for Linux is allowed, the theory means that "unauthorized" players are allowed, period. Any manufacturer would be able to produce a DVD player without having to implement any of the onerous contractual restrictions on which the DVD-CCA and MPAA have conditioned authorization. Any consumer would be able to walk into a store and buy a DVD player that plays DVDs from any country, has no Macrovision, and allows the user to skip commercials. And needless to say, the impact on the market for DVDs caused by restrictions such as region coding would not exist.

A similar situation exists for Playstation games and other video games. Video games, like DVDs, are typically produced with region protection, which means that a game is useless to someone from a different part of the world than the one for which the game has been produced. The user can get around this by buying an unlicensed player (such as the Bleem or Virtual Gamestation emulators) which circumvents the access control, or by modifying their Playstation console to circumvent the access control by itself. (Note that Sony has claimed that modified Playstations can be used to play pirated games, but has failed to mention that they play legally-purchased import games.) However, under the above interpretation of the DMCA, these activities would be prohibited and foreign Playstation games would become unusable by US Playstation owners and thus, unsellable.