

The Digital Millennium Copyright Act

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The Digital Millennium Copyright Act, or the DMCA, as it is commonly referred to, is a bill that was passed by Congress on October 28, 1998. In general, this act gives copyright holders even more power over the uses of their intellectual property. At first glance, this approach seems reasonable, however, the DMCA is very poorly written and too broad, so its power is basically limitless. Copyright holders and corporations have been using the DMCA for a variety of cases, bringing unwanted consequences to consumers.

Copyright holders have always sought more control over their works. In the 1970s the debate was about videocassette recorders. In the 1980s it was computer software rentals. In the 1990s, copyright holders and users compromised and the Audio Home Recording Act was passed in 1992. This act required that recording devices be equipped to prevent serial copying. Then in 1998 Congress passed the Digital Millennium Copyright Act, which makes it illegal to circumvent *any* kind of protection on *any* copyrighted item.[4, pg 177]

The section of controversy in the DMCA is section 1201 that reads: “No person shall circumvent a technological measure that effectively controls access to a work protected under this title.” Terms like “effectively” are very broad in their definition, and copyright holders are taking advantage of this to impose the DMCA upon consumers.[1]

So far, only a few cases have been filed under the DMCA, but many people have been threatened with possible lawsuits with DMCA violations. Many cases have been invoked

under the DMCA. A few of the cases that stand out are the Adobe/Elcomsoft case, the Edward Felton research paper, and the case brought upon Jon Johansen.

Norwegian teenager Jon Johansen created a program named DeCSS that cracks the encryption on CSS, which is the form of encryption currently found on DVD video discs. In order to legally decrypt CSS, you must obtain a license from the DVD Copy Control Association. He originally intended to use DeCSS on the Linux operating system, where there are no legally licensed DVD players available. After he wrote DeCSS he posted the source code on the Internet.

Because Johansen resides in Norway, he is not effected by the DMCA. However, the hacker magazine 2600 posted the source code onto their website and also provided links to other hosts as well. They were quickly sued by the major Hollywood movie studios for solely violating the DMCA.

The operator of 2600.com contended that DeCSS existed to preserve fair use of viewing DVD movies. The Hollywood studios, on the other hand, argued that DeCSS violated section 1201 of the DMCA which makes it illegal to provide tools to circumvent access controls.[6, pg 228]

Both of these could be argued to be true, and things get complicated when you add in the vagueness of the DMCA's terms. The courts must decide what constitutes "fair use", whether source code and hyperlinks are protected under the First Amendment, etc. In the end, the Hollywood studios won, but this case raised many of the important issues about the wording of the DMCA and it's implications.

To further show the vagueness of the DMCA's terms, printer manufacturer Lexmark invoked the DMCA against Static Control Components, which makes remanufactured toner cartridges. Static Control makes chips that they then sell to companies that remanufacture toner cartridges. The chips mimics the authentication that the Lexmark chips use, therefore undercutting Lexmark's prices. Cindy Cohn, of the Electronic Frontier Foundation, says that Lexmark is using the DMCA as an anticompetitive tool and that she expected more cases like the one brought by Lexmark. "We have long said that the DMCA's potential use as an anticompetitive tool has been great," Cohn said. "Now we're seeing it happen." [5]

In October of 2003, the US Copyright Office ruled against Lexmark, stating that "section 1201 of the DMCA allows aftermarket companies to develop software for the purpose of remanufacturing toner cartridges and printers." [2] This ruling is an important one for critics of the DMCA because it adds clarification to section 1201 of the DMCA, thus removing some of the vagueness that had been there before.

Another case of the DMCA gone wrong would be the case of Adobe vs. ElcomSoft. This is the first case of the DMCA being used in a criminal trial. The case started when ElcomSoft, a Russian company, created a program that would allow users to make copies of Adobe's eBooks and then copy them to a different computer or have the computer read them aloud to a blind person. Adobe's eBook format is copy protected, and under the DMCA, it is a crime to attempt to break any form of copy protection. Dimitry Sklyarow, a programmer for ElcomSoft, came to Las Vegas in July 2001 to deliver a speech about eBook security. Immediately after the speech he was arrested and thrown into jail. [3] Charges against him

were later dropped in exchange for his testimony. His trial just finished, and Elcomsoft was found to be not guilty, mainly because Adobe could not find any eBooks that had been cracked using ElcomSoft's software.[7] Because Adobe couldn't present any proof, the jury ruled that ElcomSoft was not guilty.

The Adobe case is a victory for opponents of the DMCA and for free speech. People need to be aware of the rights that they have and stand up for them. In the future, I hope to see more people stand up against the DMCA because that will spark public awareness of the possible threats that are happening to their rights. I also think the DMCA should be rewritten so that its terms are more clear and less powerful. Congress has realized that a substantial amount of people are against the DMCA, so they opened a website (<http://lcweb.loc.gov/copyright/1201/anticirc.html>) where people can post their views of the DMCA. Expressing their opinions through this website is just one way people can make a difference.

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