



American Association of Law Libraries, American Library Association, Association of Research Libraries, Medical Library Association, Special Libraries Association

Congressional Internet Caucus, June 18, 2004 The DMCA Revisited: What's Fair?

The Digital Millennium Copyright Act needs to be amended in order to restore a proper balance in copyright law between the rights of copyright users and the rights of copyright owners -- a balance that is essential to the future conduct of research and education in the digital age.

When Congress passed the DMCA in 1998, it provided additional protections for copyright owners, but omitted corresponding allowances for fair use and other exceptions. The DMCA's protections for digital products allow technological locks to trump other parts of the copyright law that allow for fair use and certain other uses of copyrighted works without asking permission from the copyright holder. H.R. 107, the Digital Media Consumers' Rights Act, would:

- Make it possible for libraries to go around copy protection mechanisms in DVDs or CD-ROMs to make a copy for preservation or archiving. Libraries and archives must be able to make such preservation copies well into the future, as digital storage formats become obsolete. Preservation of knowledge is a core mission of libraries.
- Permit foreign language teachers to circumvent technological access controls so that digital works purchased abroad can be played on electronic devices purchased in this country.
- Enable a librarian to unlock a technological measure to make a copy for inter-library loan purposes.

None of these activities is currently allowed under the DMCA's Section 1201, which prohibits circumventing a technological lock placed on a copyrighted work to prevent access. Yet, each of the examples involves a copy paid for by a library and a use otherwise permitted by the Copyright Act. Our Nation's libraries spend hundreds of millions of dollars each year on all forms of digital information and thus rank as one of the largest single consumer groups of digital products. Amending the law would allow libraries to receive the full benefit of their (and in many cases, the public's) investment in copyrighted products.

The DMCA's rulemaking procedure allows the Librarian of Congress to adopt exceptions to the anti-circumvention provision, but the statutory standards have been interpreted so as to ensure the denial of almost all the exemptions requested. Further, while the statutory scheme of the exemption process *may* permit exemptions for acts of circumvention, it does not permit exemptions for the manufacture and distribution of circumvention tools. Thus, even if you were to obtain an exemption, you would not be able to obtain a tool that allows you to use the exemption. The rulemaking procedure is impractical and ineffective.

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