



## The DMCA Revisited: What's Fair?

The U.S. Public Policy Committee of the Association for Computing Machinery (USACM) has found that the enactment of the Digital Millennium Copyright Act (DMCA) has had a substantial chilling effect on the conduct of computing research in the U.S., particularly in cryptography and other computer security areas. For example, the "anticircumvention provisions" of the DMCA interfere with many legal, non-infringing uses of digital computing and prevent scientists and technologists from circumventing access technologies to recognize shortcomings in security systems, to defend patents and copyrights, to discover and fix dangerous bugs in code, to analyze and stop malicious code (e.g., viruses), and to conduct forms of desired educational activities. In some instances, the threat of legal action under the DMCA has deterred scientists from publishing scholarly work or even publicly discussing their research, both fundamental tenets of scientific discourse.

Other flaws of the Act include the following:

- The Act fails to permit circumvention for "fair-use" purposes and deters individuals from conducting bona fide forms of science and technology research that is fundamental to innovation;
- The majority of research in computer security and encryption falls outside of the narrow exemptions to the Act's anticircumvention provisions, including the research and testing of information processing systems and the development of programs that impede the spread of viruses and other kinds of malicious software; and
- The Act's exemption for reverse engineering is limited to the sole purpose of achieving interoperability and fails to permit the development of software engineering tools and technology with other legitimate uses.

### ***USACM Recommends a More Targeted Approach***

USACM joins other stakeholders from the research community, higher-education, libraries, and consumer rights advocates in recommending that the anticircumvention provisions of the DMCA be revised to restrict only circumvention directly involved in infringement. In revising the Act, policymakers should restore a balance in copyright law by making a distinction between circumvention for the purpose of obtaining untoward (i.e., infringing) access to a work and circumvention for the purpose of making non-infringing use of a work. Consumers and researchers should be allowed to access hardware and software products that enable non-infringing uses of copy-protected works.

Finally, technologists should not be penalized for conducting research that is crucial to developing, scrutinizing, and testing copyright protection systems, security software, software engineering tools, or electronic voting systems.

### ***About USACM***

The Association for Computing Machinery (ACM) is a leading professional association of computer scientists and other information technology professionals dedicated to advancing the art, science, engineering, and application of information technology. The United States Public Policy Committee of the ACM (USACM) serves as the focal point for ACM's interactions with U.S. government organizations and the science and technology policy community. USACM supports the mission of ACM by utilizing its independent technical expertise to assist policymakers and the public in understanding the implications of computing and information technology policy issues.

*Contact: Jeff Grove, Director  
ACM Office of Public Policy*

1100 17<sup>th</sup> Street, NW; Suite 507; Washington, DC 20036 | 202.659.9711 | <http://www.acm.org/usacm/>