

Comment on the matter of the DCMA

Submitted by:

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Sirs,

This is to inform you of my position on the DCMA, and to bring to your attention questions about the DCMA.

It is my considered opinion that the DCMA is bad law for the following reasons:

It creates too many classes of what can be called “thought crimes.” Many kinds of easily pursued forms of personal inquiry into how software works are criminalized by the DCMA.

The DCMA deputizes the government to pursue individuals on behalf of corporate interests. It is an extension of the dubious notion that there are private commercial activities, especially in the area of ephemera like entertainment media, that need special protection by the government. Government protection of entertainment publishing should extend only to efforts to shut down large-scale pirates.

The DCMA erodes constructional protections on the individuals’ security in the effects and documents. It creates too many situations where individuals’ computer media can be searched for contraband that can take too many forms. If vast numbers of people, wittingly or unwittingly, are breaking this law, then probable cause to search extends to too many situations.

Assurances that government and industry will not abuse expanded powers of search and seizure ring hollow. Too many cases like the Steve Jackson Games case illustrate that enforcement is too often disproportionate in force to the alleged violation. Individuals have lost vast sums of money and valuable property on constitutionally and legally shaky ground. Invitation to further such abuses exposes law enforcement to needless liability and, potentially, to corrupting influences.

The DCMA is a tool for established companies to use against the entirely legitimate disruption of their business by changing business models. It is a tool to slow down the changes the Internet brings to the economy and, as such, it is a tool that impoverishes society as a whole in order to protect companies and industries that may be made obsolete by Internet innovations. The DCMA is anti-prosperity.

The music publishing industry, to take one example, is undeserving of special protection. It is often a corrupt and unethical industry in which bribery, i.e. “payola,” and defective

contracts that financially ruin artists are a well-documented part of their history. Broad-based changes in the economy that disrupt established interests in this industry are likely to be more fair and just than the status quo. Parts of the entertainment industry are traditionally, and, perhaps necessarily, rough and uncouth places. But that makes them unsuitable places for the government to protect as special at the expense of the rights of the general public.

I am a published author of books and software. I have no use for the DCMA, and all of my peers that I have inquired of think likewise. My publishers may take an official line in favor of the DCMA, but, often, this is more from conservatism in that any measure that increases their level of protection is to be supported, than from enlightened consideration of the fact that, DCMA or no DCMA, they will have to reshape their business models or they will not survive as commercial entities.

Therefore I urge you to remove elements of the DCMA that make creation or possession of certain types of software a crime, and that limit long-established "fair use" of copyrighted material. The alternative is to promulgate an oppressive law that will be widely violated and, in those acts of violation, will undermine time-tested and legitimate intellectual property protections. The DCMA takes the general form of many bad laws: it overreaches, and by doing so, chips away at respect for good, useful, constitutional laws that the public understands and accepts.