

It is with great glee and the highest regard for the process of public discussion that I take advantage of this opportunity to reply to the comments of Bernard R. Sorkin made on behalf of Time Warner Inc.

I will focus on his answers to some of the specific questions:

1. What technological measures that effectively control access to copyrighted works exist today?

Mr. Sorkin wrote:

>
> The technological measures existing today that effectively control
> access to copyrighted works include scrambling/encryption
> technologies applied to cable and satellite signals and the
> Content Scramble System (CSS) applied to DVDs.

The wide distribution of tools such as DeCSS to circumvent the above measures is common knowledge. Though media industry lawyers may like us to believe otherwise, there is no technological measure to control access to copyrighted works which meets any criteria of effectiveness.

In his answers to subsequent questions, Mr. Sorkin repeatedly claims that copy prevention technologies have not adversely affected lawful users. He is mostly correct, not because the technologies permit all types of lawful use, but because the technologies are ineffective in their attempts to limit use, lawful or otherwise.

On the other hand, if the technologies were effective, they would have a significant adverse effect on the lawful uses, such as duplication for archival and the eventual transfer into the public domain, of copyrighted material. It is only the circumvention of copy prevention technologies which makes them ineffective.

11. For purposes of this rulemaking, in classifying works that are to be exempted from the prohibition against circumvention of technological measures that control access, should any classes of works be defined, in part, based on whether the works are being used for nonprofit archival, preservation, and/or educational purposes?

> Assuming that some works are to be exempted from the circumvention
> prohibition (an assumption with which I do not agree), I know of no
> way of defining "classes" of works for that purpose.

Indeed, it is difficult to define such classes of works. I'm sure this will become apparent to anyone trying to reconcile the differences of opinion between the various responses to this question. It is my opinion that there is no class of work for which circumvention should be prohibited. I agree completely that no class of work should be defined. All copyrighted material must be copyable, otherwise what is the copyright for? How does the copyright promote science and the useful arts (as mandated by the United States Constitution)?

Mr. Sorkin later writes:

>

> Unfortunately, no technological protection, however effective, is
> completely inviolable, hence the need for effective legal
> enforcement.

Effective legal enforcement of copyright already exists. I
am glad to see recognition on the part of Time Warner of the
ineffectiveness of copy prevention technology, however.

20. Has such circumvention (or the likelihood of circumvention) had any
impact on the availability of copyrighted works?

> Such circumvention would probably have resulted in a reduction (if
> not elimination) of the number of motion pictures released on DVD. The
> entry of a preliminary injunction by the United States District Court
> in New York City avoided that impact. Another glaring example is that
> DVD/audio, a highdensity, high quality new format for a recorded music
> has been delayed for an indeterminate time because of the "hack" of
> the CSS.

The decision not to release DVD or DVD/audio products cannot be
shown to be caused by the availability of copy prevention
circumvention techniques. Despite the availability of CSS, DVD
products continue to sell well, and there is no reason to believe
that new products would not. Many other examples of other easily
copied media are available.

Respectfully,

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