



Class of Works

Circumvention of Software - where the encryption needs to be circumvented due to unavailability of password(s) caused by absence, death, or termination.

Summary of the Argument for the Exemption

Difficulty in contacting the original copyright owner and getting a rapid or timely response by said copyright owner to circumvent software for cases where password retrieval or bypass is necessary, is cause for exemption. The difficulty caused by the necessity to contact copyright owners in the first place is cause for exemption. The requirement that the copyright owner be contacted in a case of a non-threatening circumvention is overbearing.

Example:

Three Rivers Community Technical College, March 1999. A contract employee (name withheld) who worked in the library, was put on paid leave due to misuse of his computer privileges. Subsequently, his contract was not renewed. He worked at the library for many years as the administrator of the computers in the library. One of his responsibilities included the student identification card system. This former employee refused to release the passwords for system to the library staff and director. Thus, there was:

1. A need to decrypt to use the student id system
2. A right to decrypt, because the terminated employee refused to release information
3. The college did not have the resources to legally pursue the employee
4. Time constraints prohibited action against the former employee since the students need to enroll and get identification cards.
5. Time constraints prohibited action of obtaining copyright holder information, contact and permission to bypass the encryption since students needed to get identification cards.

Outcome of This Situation:

The college needed to purchase another machine to create student identification cards. They needed to rebuild the database and since the budget did not allow for a new identification card machine, students could not get identification cards for over a semester.

Several types of circumvention that solve the problem include one or more of the following:

1. Password retrieval
 - a. Attack: Brute force test of all possible passwords
 - b. Unauthorized Observation (EULA usually prohibits observation):
 - Trace or disassemble password entry software to glean:
 - location of password
 - format or encryption method for hiding the password
2. Bypassing password entry
 - a. Observe: Trace or disassemble access software to:
 - remove the password
 - remove the password request component
 - Reconstruct a new password request component
3. Replace/Repair the database
 - a. Observe: Trace or disassemble the database software to:
 - discover the format of the database
 - reconstruct the database
 - to reverse engineer the database software to dump database in a readable format for reconstruction

This is more than simply a mere inconvenience. The remedies involve non threatening breach of end user license agreements, copyright holders general rights and use of technology to discover information.

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