

March 3, 2003

## **FROM A REMANUFACTURER**

My company, Empire Laser Process, Inc. has been in the business of remanufacturing toner cartridges for 15 years. Through that time, various OEM's have tried to stop what we do by saying that use of a remanufactured cartridge would void the printer's warranty. There have been some court cases that upheld the remanufacturer's right to do what they do.

Now it seems that Lexmark is trying to stifle competition by using computer chips on their cartridges, so that only Lexmark toner cartridges will work in their printers.

What's next? Will Ford and Exxon get together and come up with a product that will only allow Exxon gasoline to be used in Ford products? It's not that far fetched.

I hope that the Copyright Office will see the danger in limiting competition for toner cartridges and the effect the present ruling will have on thousands of small business' around the United States.

I remanufacture laser toner cartridges. My business is to repair used toner cartridges by cleaning them, replacing worn out components, and adding new toner. The resulting remanufactured cartridge is sold to consumers at a substantial discount to a new cartridge. There are many benefits in using a repaired cartridge over a new cartridge. Remanufactures such as myself employ Americans to repair cartridges. We keep empty toner cartridges from going into landfills. By repairing cartridges instead of making new ones, we reduce America's dependence on the imported oil used to make the body of a new toner cartridge.

The Digital Millennium Copyright Act, (DMCA) was not intended to prevent the use of repaired toner cartridges in laser printers. I join Static Control in urging the Copyright Office to clearly state that this is the case. However, in an abundance of caution I would also request the Copyright Office exempt from the DMCA the three classes requested by Static Control. These classes are:

1. Computer programs embedded in computer printers and toner cartridges and that control the interoperation and functions of the printer and toner cartridge.
2. Computer programs embedded in a machine or product and which cannot be copied during the ordinary operation or use of the machine or product.
3. Computer programs embedded in a machine or product and that control the operation of a machine or product connected thereto, but that do not otherwise control the performance, display or reproduction of copyrighted works that have an independent economic significance.

These three exemptions will not affect the DMCA's primary goal of preventing people from circumventing encryption for the purpose of copying protected works. It will make clear that the DMCA was not intended to prevent the repair and reuse of hardware nor was it intended to prevent the interoperability of physical devices.

#### ALTERNATE PARAGRAPH

We are able to keep 9000 lbs. of waste (2 ½ lbs, x cartridges reman.) out of landfills. Providing a savings of \$145,000 to end users.

Sincerely,

Mark Kuczek  
Empire Laser Process, Inc.