

Name:

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Proposed class or classes of copyrighted work(s) to be exempted:

Digital audio or video recordings which, in order to allow playback, require the installation of software which endangers the security of or otherwise usurps user control of the user's playback device, personal computer, or personal information.

Brief summary of the argument(s) in support of the exemption proposed above:

A user's privacy and financial data could be at risk if software which endangers the security of or otherwise usurps user control of the user's playback device, personal computer, or personal information is installed. This particular noninfringing use can not be reasonably accomplished by means of alternative authorized copies.

Argument(s) in support of the exemption proposed above:

Sony BMG has recently proven the dangers of insecure Digital Restrictions Management (DRM) software by releasing many of its more recent CD albums with copyright protection software which literally hides any virus with the letters "\$sys\$" occurring in its file names from the user or antivirus software. For evidence, there is a detailed technical explanation at <http://www.sysinternals.com/blog/2005/10/sony-rootkits-and-digital-rights.html>.

Understandably, it is not illegal to require such software. However, it should not be illegal to circumvent the use of such DRM software if it is found to be insecure or dangerous in nature. If the DRM software restricts use of the playback device beyond the context of the single recording with which it is included, it should not be illegal to circumvent such DRM software. For example, if a particular suite of DRM software were to disable my CD writer from writing an audio CD of my child's first words, then I should be legally allowed to disable or remove that software for that purpose.

This particular noninfringing use of a copyrighted "work" can not be reasonably accomplished by means of alternative authorized copies of the work available in the marketplace because there usually is no alternative. If an alternative were available then it would defeat the purpose of the DRM software.

Copyright does not give the right to control or render insecure an individual's personal computer, playback device, or recording device to the copyright holder. Technically, copyright does not give him, her, or it the right to control the copying capabilities of an individual personal computer, either. However, it definitely does not give the right to restrict use outside the context of the copyright holder's particular work. Therefore, digital audio or video recordings which, in order to allow playback, require the installation of software which endangers the security of or otherwise usurps user control of the user's playback device, personal computer, or personal information should be exempt from the prohibition against circumvention of technological measures that control access to copyrighted works.