

Outline for a Computer Security Exemption to the DMCA

I suggest that the following class of works be exempt from DMCA protection:

"Works whose anti-piracy measures endanger the security of the user's computer or electronic device."

The Sony BMG "rootkit" case of November 2005 demonstrates a real need for such an exemption. Sony's anti-piracy mechanism was flawed and left the user's computer vulnerable to outside attack.[1] Additionally, Sony's rootkit sent personally identifying information to Sony's Internet server.[2] Even so, this only allowed circumvention for the purposes of preventing that information from being sent, and for a few days users were given the options of leaving the rootkit on their computer or employing a poorly written ActiveX uninstaller that left their computer similarly vulnerable.[3] In effect, Sony's rootkit was preventing fair use access to the purchased compact discs such as making a backup copy, because their anti-piracy software could not be used on Windows computers without endangering the user's security. Additionally, the prohibition on circumvention prevented users from disabling this software safely if it was installed.

Forcing the consumer to use dangerous software in order to make fair use of a product should not be within the rights of any property holder. According to Andrew Moss, Microsoft's senior director of technical policy, "A personal computer is called a personal computer because it's yours. Anything that runs on that computer, you should have control over." [4] Stewart Baker of the United States Department of Homeland Security gave a similar opinion: "It's very important to remember that it's your intellectual property; it's not your computer. And in the pursuit of protection of intellectual property, it's important not to defeat or undermine the security measures that people need to adopt in these days." [5]

In the spirit of these business and government leaders as well as the privacy exemption of section 1201(i) of the DMCA, I believe that insecure anti-piracy measures should be exempt from protection. Like the privacy exemption, this puts the burden on the copyright holder to provide the consumer with anti-piracy software which is safe for him or her to use.

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[1] As recorded by Mark Russinovich.

<http://www.sysinternals.com/blog/2005/10/sony-rootkits-and-digital-rights.html>

[2] As recorded by Mark Russinovich.

http://www.sysinternals.com/blog/2005/11/sony-you-dont-reeeeaaaally-want-to_09.html

[3] As recorded by Matti Nikki.

<http://hack.fi/~muzzy/sony-drm/>

[4] Quoted by John Borland, "Who has the right to control your PC?"

Reported on C|net News.com, 21 November 2005.

http://news.com.com/Who+has+the+right+to+control+your+PC/2100-1029_3-5961609.html

[5] Quoted by Reuters, "Microsoft removing Sony BMG malware from PCs."

Reported on CNN, 15 November 2005.

<http://www.cnn.com/2005/TECH/ptech/11/15/sonybmg.microsoft.reut/>