

Submission to Congress
30th November, 2005

The DMCA seems to prevent some current rights which are exceedingly important to me:

1. The right to privacy.
2. The right to loan copyrighted works to friends.
3. The right to partake in lawmaking (i.e. democracy).

1. The right to privacy

The right to privacy is exceedingly important to me personally and to democracy.

One of the rights I enjoy is that of purchasing goods without my identity being known. Technology can take away this right, and the DMCA can make circumventing that technology illegal, effectively extinguishing the right to privacy.

The right to privacy is important for many reasons, including:

- Privacy encourages free speech, particularly speech which criticises politicians, an important democratic right, because if people can buy goods without having to yield their identity to the vendor, they are protected from politically-motivated retribution or oppression.
- Privacy means I can enjoy a work by exchanging money for goods, and nothing else. The transaction is transparent. A lack of privacy can lead to lower personal security, for example if an online store sells my personal transaction history to a third party, including such facts as the expensive jewellery I've bought, or the make and model of the home security system I've bought.

Technology means vendors can require private identifying information from customers before any transaction can occur. Increasingly in online sales this information is required. As far as I am aware, copyright does not extend to having to yield up my private information. By what right do vendors require this information from me? How can I buy from a vendor if the DMCA means that copyrighted works cannot be sold in a private way? Where is the workaround? If the technology doesn't allow the work to be sold or resold in a conventional, private way, then there is no workaround.

2. The right to loan copyrighted works to friends

Secondly, I want to preserve the right to loan copyrighted works to friends. If I loan a work to a friend, I cannot use it concurrently. If I loan a record or a book to a friend, they can see if they like it, and if they do, they can buy their own copy. Technologically protected works which can't be loaned are additionally

restricted by the DMCA. I can't work around the technology so as to exercise my right to loan. I demand the right to loan works - all works, even digitally expressed works. I already have that right with physical goods by common usage. I've had that right all my life. The right has existed for centuries, ever since people loaned objects to each other. Perhaps that right has existed since we all lived in caves. That right exists in digital works too; why shouldn't it?

I'm not talking about copying a work, or violating copyright.

I'm not talking about using two copies concurrently.

I'm talking about being able to loan a work I have legitimately bought, to a friend to use for a while, during which time I can't use it, and then my friend will return it to me. I think that is a right.

Technology can remove that right. The DMCA can prevent me from regaining that right. How am I suppose to exercise that right? How are my friends supposed to determine if they want to purchase a copy if they can't sample it first? Who gave the copyright owners the power to remove this fundamental right from me? Who gave the DMCA law the power to stop me regaining this right?

These two cases are related. If I can loan a work to a friend, I don't require them to give their identity to anyone. In fact, by allowing them to try before they buy, I'm actively preserving their anonymity. If they don't like the work, they can simply return it to me, no harm done, and they need not give up their identity to an untrusted third party. I, by loaning a work, preserve their privacy. Technology removes rights which copyright owners don't always have the right to remove. The DMCA makes it impossible to rectify those problems.

3. The right to partake in lawmaking (i.e. democracy)

A fundamental problem with many technological access protection schemes is they effectively make law, without the involvement of lawmaking bodies such as Congress and the Senate. Any company producing data goods for sale can enact any law they want in software. The software enforces that law, even if that company has no right to create that law.

For example, a music publishing company can make software which spies on its customers, sending private information to that company about what music that person listens to, or what other music publishing companies that person has purchased from. Rights of privacy are eliminated. Even if the laws of the state in question say you have a right to privacy, software overrides those laws. In other words, companies are now enacting and enforcing law, through software. If the DMCA makes it illegal to regain rights lost this way, the DMCA is, in effect, hastening the demise of traditional democratic lawmaking bodies such as Congress and the Senate. The DMCA is placing into the hands of companies the right to make laws, without any checks or balances.

Last time I looked, the body of laws known as 'copyright' grants companies very few of the rights they are now claiming in software. So my question is this: how can consumers regain their democratic rights

when every major publisher of digital works is abusing their ability to enact laws through software? The fallacy that the marketplace will just "sort itself out" doesn't work when all the major players collude to remove rights from consumers. The DMCA hampers legislative and practical means to redress these problems.

I have outlined two important rights that consumers are being stripped of through software: the right to privacy, and the right to loan goods to friends. Software can remove these rights in the case of digital goods, and the DMCA can make it impossible to restore those rights in practice. What are you going to do about it?