

CSS encryption, as found on most commercial DVD media, effectively controls access to the copyrighted work thereon by employing a weak cryptographic scheme to restrict access to licensed manufacturers of hardware and software devices for viewing the media.

Without purchasing one of these devices, it is impossible to access the content of the media unless this protection mechanism is circumvented. No free software exists which contains the ability to decrypt the content, except that which does so in a manner currently prohibited by the DMCA. An excellent example of the impact of this situation on non-infringing use is as follows:

A consumer purchases a DVD movie. He owns the hardware (a DVD drive) necessary to view the content on his computer, except that the content is encrypted. His original equipment manufacturer (OEM) has not included in the machine any hardware or software for decrypting DVD media. To solve this problem, his only (currently) legal choice is to make another purchase, usually in excess of the price of the work itself, to obtain the hardware or software necessary to access the content. He is now in possession of a copyrighted work to which he is legally entitled access, but from which he is technologically denied that access.

If the manufacturer assumes that all consumers have the means to access the content, it must also acknowledge that this protection mechanism does nothing to prevent consumers from making unauthorized copies of the work. A copy of the encrypted content will be functionally identical to the original, and exactly as difficult to access. That is, it does not prevent infringement in any way, but it does pose a significant obstacle to non-infringing access.

The problem is especially evident to users of the Linux operating system. The only unambiguously legal solution available to Linux users is that formerly distributed by InterVideo, and it only operates correctly on certain now-uncommon versions of the operating system. Manufacturers of Linux distributions (with one commercial exception) do not include software that makes it possible to view encrypted DVD movies because of the DMCA and its potential consequences. It is not economically feasible to do so because the operating system and its included software are free, and a manufacturer cannot ship software for which it must pay a per-seat licensing fee as required by manufacturers of commercial DVD software.

For these reasons it is recommended that encrypted DVD media be exempted from prohibition against circumvention.

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