

Name of Commenter: Jeffrey J. Wasel

Proposed class

Individual "fair use" copying as allowed prior to the DMCA, allowing an individual the right to make copies of material legally obtained for their own use and not for commercial re-distribution. ***This materials or class of works include motion pictures and sound recordings.***

Summary of argument for motion pictures and sound recordings

The fair use doctrine worked for many, many years without a problem, including the early years of digital copying technologies. The DCMA was poorly written to try and cover all contingencies as put forth by the motion picture and recording industries at the expense of the consumer, without adequate protection for the established rights under previous understandings of fair use. This continued attack on the individual's right to make back-up copies of legally obtained movie and sound recordings goes against all that is fair in the free market of ideas, and in its proposed form, this latest revision of the DCMA is egregious in it's further crippling of consumer rights.

As this is written, SONY Corporation has had to pull DCMA technology from its shipping music CDs that installed a "spy bot" on a consumer's hard drive, the bot's purpose to ensure the CD was only played on one type of device. Fortunately, consumer outrage at this frankly sneaky and dastardly act prevented this practice from becoming wide-spread. I include this as it is emblematic of the lengths that some companies are prepared to go to prevent consumers from exercising their fair use rights. The crux of the matter is that SONY and other music publishers, along with the MPAA, were caught flat-footed at the use of the Internet as a distribution mechanism. While I do not condone the copying and distribution of protected works for commercial gain, or beyond what can be called fair use, the increasingly draconian measures being employed under the guise of the DCMA need to stop as all that this measure has spurred is an increasing war of words and anti-piracy hacking, which benefits no one. Consumers are paying a very heavy price for a lack of market awareness and reasonableness on the part of the content providers.

If anything, the DCMA needs to be scrapped, not further modified, as the very narrow windows currently proposed ignore the fundamental flaws in the legislation. Congress and the Patent Office need to go back to work and look at fair use as the marker of protection, not the unfettered rights of the content providers who have no interest in fair use whatsoever. They want to take previously available fair use content and wrap it with DCMA anti-piracy tags, and then re-sell it; in effect, charging the public multiple prices for that which under the old fair use would have cost but one price.

Respectfully submitted.

Jeffrey J. Wasel