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RE: comments on DMCA 1201f

Dear Mr. Carson,

Thank you for seeking my views on this rulemaking proceeding, this time as to whether 17 U.S.C. 1201 (f), the Reverse Engineering exemption, would apply to the activities of Mr. Kale and me.

Let me preface this by saying these are merely the observations of a small business owner, software developer and consumer, not an attorney.

The majority of my comments will be related to devices known as hardware lock devices, also called dongles. A dongle is a device that attaches to a printer port and in some newer models, it attaches to a USB port on a personal computer.

Dongles are only supplied by software companies when a consumer purchases their software package. Therefore to possess a dongle along with the accompanying software, the end user must be <u>authorized</u> to use that package from the software company.

I went back to read the legislative history of the DMCA in the HOUSE MANAGERS REPORT, SECTION-BY-SECTION ANALYSIS OF H.R.2281 AS PASSED BY THE UNITED STATES HOUSE OF REPRESENTATIVES ON AUGUST 4, 1998. At [5] on page 6 of the House Managers Report, we see the intent of section 1201, **"***Subsection (a) of* new Section 1201 <u>applies</u> when a person <u>who is not</u> <u>authorized</u> to have access to a work seeks to gain access by circumventing a technological measure…." As I mentioned already, the dongle user would be an authorized user. So would it be a non infringing use to access a program they were already licensed to use?

Looking at section 1201 (f) and how it relates to dongle replacement, "*Subsection (f)* is intended to allow legitimate software developers to continue engaging in certain activities for the purpose of achieving interoperability…" The purpose of this subsection is to avoid hindering competition and innovation in the computer and software industry…. Paragraph (1) permits the circumvention of access control technologies for the sole purpose of achieving software interoperability." (House Managers Report [14] page 12) Interoperability has been a key issue in the ever changing world of computers. (It is important to point out that the software vendor has already been paid for their work and the end user is simply trying to gain access to a work they have paid for—which I believe would be a fair use)

At times we are required to examine the program of an authorized user to identify and analyze portions of the program that communicate with the dongle. (This was done with the software from the U. S. Naval Surface Warfare Center.) What we then arrive at is a "new and original work", an independent program, that communicates with the operating system and the authorized user's software program. The information exchanged is data and that data is arrived at in a similar yet different algorithmic method (mathematical formulas as such are not protected by copyright-House Managers Report [16] page 13) This promotes interoperability between software, hardware and operating systems and makes more works available to the public, eliminating the need to maintain old legacy hardware. This also promotes competition and innovation, the purpose of this subsection.

Unfortunately it is not always possible to create a completely independent program. This is especially true of the older DOS based software. The work I did for the U.S. Department of Justice, the Immigration and Naturalization Service was one such example.

I also looked at section 1201(g) while reading Mr. Kale's testimony. I felt there were similarities between the obsolete floppy disk protection methods and the "low grade encryption methods" mentioned and how it would not be a violation of 1201 to bypass these. House Managers Report [17] page 13…"and other computer programs include a security feature allowing users to password-protect documents (employing a low-grade form of encryption.) It is not uncommon for users of such products to forget or lose their passwords for such documents, making their own protected works unrecoverable. As a result, many independent programmers have created utilities designed to assist in the recovery of passwords or password-protected works. Several of these utilities are distributed over the Internet as freeware or shareware. Because these utilities have a substantial legitimate use, and because they would be used by persons to gain access to their own works, these devices do not violate section 1201."

What concerns me Mr. Carson is that while 1201 (f) can apply to dongles most of the time, none of the statutory exemptions provide the relief that the triennial proceedings have. The exemptions granted in the past two rulemakings have done no harm whatsoever and have made more works available to more people than ever before. Consumers need your help for the next three years and I urge you to renew the present exemptions at the very least.

Thank you for your consideration,

Sincerely,

(Submitted via email)
Joseph V Montoro
President
Spectrum Software Inc.

Cc via email:
Steven J. Metalitz
Rob Kasunic
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