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Reply comment
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Class of works: Film recordings such as DVDs, but also including future storage media and formats.

DVD encryption or CSS crops up in numerous of the comments submitted during the initial comment period. The chief reasons cited for those who propose an exemption for DVDs and similar media are, because as the law (DMCA) stands, without circumventing the copy protection mechanisms built into the DVD and its player, the following uses of most commercially-released DVDs are impossible:

1. Personal backup (for instance, if the medium is damaged or destroyed)
2. Playback on alternative devices or operating systems (such as Linux)
3. Fair use in an academic or research setting (for instance, using film clips in a class or study)

These are, to the best of my knowledge, non-infringing uses of the copyrighted material stored on the DVD.

I would like to add another non-infringing use, namely personal use. This comprises playback of rented or personally “owned” content (i.e., copyrighted material for which one has acquired an unlimited or time-limited license for the purposes of personal use.)

I adding my comment because it is often impossible to view a DVD—make non-infringing use of copyrighted material—without circumventing the DMCA.

As you may be aware, DVDs are region-coded. Unlike videocassettes, where various national standards (NTSC, PAL, SECAM) rendered films sold in one country unplayable in another for *technical* reasons, there is no reason that DVDs should not be playable worldwide. Region coding was added to DVDs. It restricts access to discs whose region code does not correspond to that of the player. DVD region coding was developed to:

1. Discourage piracy: so that counterfeit of discs sold in one region, when exported to another, would be would be unplayable in the latter.
2. Restrict international trade as to prop up prices: so that one could not, for instance, order cheaper but legally-produced import discs from another country.
3. Control the release of film as to maximize ticket sales: so that film watchers in parts of the world with delayed release dates, where the film in question is still in movie theaters, could not order DVDs from the lead markets.

The result of DVD region coding, when combined with the DMCA, has been to render a non-infringing use illegal. Here are some examples:

1. Laptop (also known as notebook) computers are designed to be portable. They come equipped with universal power supplies that can operate on the electrical current provided in any part of the world—or DVD region—for the lifetime of the device.

Their DVD drives (readers), however are not so flexible. Typically, the DVD drives built into laptop computers allow users to play DVDs from any region, with the following restriction. Whenever the user inserts a disc whose region does not match that of the preceding disc played, he must change the region for which the computer is configured. In order to enforce region coding, the user is (generally) allowed a limit of five (5) region changes. Once he changes the region for the fifth time, the DVD drive is permanently locked to that region. The DVD drive will henceforth *only* play discs that bear the same region code.

In order to play discs from other regions on his computer, the user must purchase a new, additional or replacement DVD drive. However, the new drive is subject to the same restriction. After five region changes (which could be as simple as alternating two discs from different regions five times, e.g. 1-2-1-2-1), the new drive would also be locked.

For frequent travelers like me, this poses a significant problem. One need only travel to Europe (region 2) or Mexico (region 4) twice and play a film while there to cause the DVD drive forever to lock.¹ If I return to Europe a third time, I will be unable to play any films I purchase or rent there. Even worse, if the fifth region change occurs while I am in Europe (to region 2), my DVD drive will be useless for playing films with the region code for the United States and Canada (1).

The only means for me to watch films that I have paid for—either bought outright or rented—in a laptop or other such DVD reader that I have also paid for is thus to circumvent the access control measure (in this case DVD region coding), behavior that is prohibited under the DMCA.

Note that this applies not only to laptop computers, but to any portable device (such as DVD drives and portable DVD players) that plays DVDs.

¹ Here is how the drive would become locked:

1. Laptop owner plays a film in the US. Drive is set to region 1.
2. He then travels to Europe and plays a film. Drive is set to region 2.
3. After returning home to the US, he watches a third film. Drive is set to region 1.
4. He then travels again to Europe and plays a film. Drive is set to region 2.
5. After returning home for the second time to the US, he watches a film. Drive is set and locked to region 1. The laptop owner will not be able to play legally-acquired, European-market DVDs (or DVDs from any other region) from that point forwards.

2. With online shopping and increasing mobility, DVDs are increasingly surfacing in markets that do not correspond to their region codes. Whether one is a professional who brings his film collections with him when he moves, a film aficionado who buys foreign movies not available in his home market, or a tourist who makes impulse purchases, region coding will get in his way.

The point made about region code locking on the preceding page applies here as well. I need not travel to Mexico every time you wish to play a region 4 disc. A collection of films with just one DVD with a different region code that the rest would suffice eventually to cause the DVD reader of my laptop or desktop computer to lock.

As regards standalone, non-portable DVD players, the sort that one connects to a television, the situation is not any less bleak. Most will flat out refuse to play a disc from a different region than the market in which the DVD player was sold.

The only means for me to watch films that I have paid for—either bought outright or rented—in a laptop or other such DVD reader that I have also paid for is thus to circumvent the access control measure (in this case DVD region coding), behavior that is prohibited under the DMCA.

I have proposed the class of works “film recordings such as DVDs” for two reasons:

1. A large subset of the population buys and rents film recordings.
(Whether for pleasure or work, who does not watch movies? In other words, this does not affect a small interest group but the entire population.)
2. Individuals often use a very large number of DVDs within a given time frame.
(Hence video rental stores. The frequency with individuals use DVDs makes it more likely that users will run up against the measures such as region code locking that block non-infringing use more probable.)
3. These persons intend to engage in non-infringing uses with these recordings.
(Namely private viewing after purchase or rental. DVD that is primarily used for illicit purposes, such as peer-to-peer file sharing over the Internet is.)
4. Similar, widespread access control measures do not exist for other media.

For additional arguments that, although presented for a slightly different exemption (to wit “foreign audiovisual works that are released on non region 1 DVD format and are not otherwise available on DVD in the United States”), would also be valid here, see:

http://www.eff.org/IP/DMCA/copyrightoffice/20030515_region_dvd.php

Thank you for your consideration.

Sincerely,

Francis R. Pickering