

Comments in response to Peter Decherney's statement:

In his brief, Decherney makes a special case for an exemption from the anti-circumvention restrictions of the DMCA for a special class of works—audio-visual works held in university libraries that are used for teaching purposes.

I wholeheartedly support Decherney's argument. It is crucial for those of us who use audio-visual works in our teaching that we have access to the best possible copies of them for face-to-face teaching purposes. As Decherney points out, it is now illegal to prepare clips of films, for example, for classroom use by copying them to formats that facilitate that use (e.g., computer files for data display or clip "reels" on CD-Rom or writable DVDs).

It is important to point out that new technology has brought with it both blessings and problems for classroom teaching. DVDs now provide superior images and sounds to those previously available on VHS or laser disc. But VHS and laser disc material did not (normally) contain software that restricted their use (CSS was used on certain titles to prevent them from being copied, but the vast majority of films in the formats could be copied for classroom use). Anti-circumvention technology is now routinely used on virtually all DVDs. And the DMCA explicitly forbids the use of anti-circumvention devices. For dozens of years prior to the DMCA, teachers were able to teach using video clips; now that is thwarted. This new restriction on use is a burdensome hurdle for educators to deal with.

There is a much larger issue at stake here. The DMCA has expanded the rights of copyright holders and done so at the expense of Fair Use. Because of anti-circumvention technology, our right to use copyrighted material under the Fair Use provision of the 1976 Copyright Act has been substantially curtailed. Such an expansion of rights on behalf of one party threatens the traditional balance in copyright law between copyright holders and the public that uses copyrighted material.

Decherney's statement deserves your full attention.

John Belton