REQUEST FOR PUBLIC COMMENT.

REQUEST FOR COMMENTS ON SECTION 1201(G) OF THE DIGITAL MILLENNIUM COPYRIGHT ACT

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LIBRARY OF CONGRESS
Copyright Office
[Docket No. 990428110-9110-01]
Request for Comments on Section 1201(g) of the Digital Millennium Copyright Act

AGENCY: Copyright Office, Library of Congress
ACTION: Request for public comment.

SUMMARY: The National Telecommunications and Information Administration of the United States Department of Commerce and the United States Copyright Office invite interested parties to submit comments on the effects of Section 1201(g) of Title 17, United States Code, as adopted in the Digital Millennium Copyright Act, Pub. L. No. 105-304, 112 Stat. 2860 (Oct. 28, 1998) ("DMCA") on encryption research and the development of encryption technology; the adequacy and effectiveness of technological measures designed to protect copyrighted works; and the protection of copyright owners against unauthorized access to their encrypted copyrighted works.

The DMCA, enacted on October 28, 1998, directs the Register of Copyrights and the Assistant Secretary for Communications and Information of the Department of Commerce to prepare a report for the Congress examining the impact of Section 1201(g) on encryption research and including legislative recommendations--if any--no later than one year after enactment of the DMCA. This Federal Register Notice is intended to solicit comments from interested parties on the effects of section 1201(g) of the DMCA. More specifically, how will the provisions of section 1201(g) of the DMCA affect encryption research?

The DMCA defines "encryption research" as identification and analysis of flaws and vulnerabilities of encryption technologies applied to copyrighted works. This activity must promote understanding of encryption technology or advance the development of encryption products.

DATES: Comments must be received by July 26, 1999.

ADDRESSES: The Department of Commerce and the Copyright Office invite the public to submit written comments in paper or electronic form. Comments may be mailed to Paula J. Bruening, Office of Chief Counsel, National Telecommunications and Information Administration (NTIA), Room 4713, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, D.C. 20230; and Jesse M. Feder, Office of Policy and International Affairs, U.S. Copyright Office, Copyright GC/IG&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Paper submissions should include a version on diskette in PDF, ASCII, Word Perfect (please specify version), or Microsoft Word (please specify version) format. Comments should be sent to both the Department of Commerce and Copyright Office addresses. Comments submitted in electronic form should be sent to dmca@ntia.doc.gov and crypto@loc.gov. Electronic comments should be submitted in the formats specified above and should be sent to both the Department of Commerce and Copyright Office addresses.

FOR FURTHER INFORMATION CONTACT: Paula J. Bruening, National Telecommunications and Information Administration (202) 482-1816; and Jesse M. Feder, Office of Policy and International Affairs, US Copyright Office, Library of Congress (202) 707-8350.

SUPPLEMENTARY INFORMATION:
The National Telecommunications and Information Administration, United States Department of Commerce and the United States Copyright Office, Library of Congress invite interested parties to submit comments on the effects of the Digital Millennium Copyright Act (DMCA) on encryption research and development of encryption technology; the adequacy and effectiveness of technological measures designed to protect copyrighted works; and, protection of copyright owners against unauthorized access to their encrypted copyrighted works.

The objective of Title I of the Digital Millennium Copyright Act was to revise U.S. copyright law to comply with two recent World Intellectual Property Organization (WIPO) Treaties and to strengthen copyright protection for motion pictures, sound recordings, computer software and other copyrighted works in electronic formats. The DMCA establishes a prohibition on the act of circumventing technological measures that effectively control access to a copyrighted work protected under the U.S. Copyright Act. The prohibition, found in Section 1201 of Title 17, U.S. Code, takes effect October 28, 2000, two years from the date of enactment of the DMCA.

The DMCA also makes it illegal for a person to manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component or part thereof which is primarily designed or produced to circumvent a technological measure that effectively controls access to or unauthorized copying of a work protected by copyright, has only a limited commercially significant purpose or

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use other than circumvention of such measures, or marketed for use in circumventing such measures.

Despite the general prohibitions of Section 1201, the DMCA permits certain specified activities that include the circumvention of access control technologies in limited circumstances. One such specified activity is good faith encryption research. The DMCA defines “encryption research” as identification and analysis of flaws and vulnerabilities of encryption technologies applied to copyrighted works. This activity must promote understanding of encryption technology or advance the development of encryption products.

The DMCA exempts from the general prohibition certain good faith activities of circumvention when: (a) The person circumventing the protection system lawfully obtained the encrypted copy of the work; (b) circumvention is necessary to conduct the encryption research; (c) the person circumventing the protection system made a good faith effort to obtain authorization prior to the circumvention; and, (d) such circumvention does not constitute copyright infringement or a violation of any otherwise applicable law. The DMCA also lists additional factors to be considered when determining whether a person qualifies for the exemption.

The DMCA also includes several additional exemptions from the general prohibition or circumvention. One such exemption is for security testing. Section 1201(j) of Title 17, U.S. Code permits circumvention of access control technologies in order to test the effectiveness of a security measure. Comments on Subsection 1201(j), the exemption for “security testing,” and comments on exemptions other than the exemption for encryption research, are not being solicited by this Notice and will not be considered.

Information collected from responses to this Federal Register Notice will be considered when preparing the required report for Congress.

Kathy D. Smith,
Acting Chief Counsel, National Telecommunications and Information Administration.

Marybeth Peters,
Register of Copyrights, United States Copyright Office.

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