

Digital Rights Management (DRM): *Whose rights are being managed? (revisited)*

Unstoppable market forces will drive digital rights management.

Consumers worldwide are buying more blank CDs and less recorded music, pushing blank CD sales up 40 percent in 2002 while recorded music sales fell 16 percent. That's an unmistakable sign that unstoppable market trends will force fundamental changes in the music and movie distribution business. Although no one can predict what new business models will prevail, it's certain that the content distribution business will rely on innovations in software, server-side content management tools, and media devices.

Software industry has been there, done that.

The software industry has grown up in a digital world, crafting business models on the fly that take piracy rates exceeding 30% into account. But decades of experience combating piracy have taught the industry to avoid unwieldy copy-protection schemes that frustrate its best customers or encumber the legitimate use of our products. We've learned that the proper balance of technology measures and enforcement efforts can stop enough piracy to sustain profitable business models.

The "perfect" is the enemy of the "good."

Music and movie makers are clearly making enforcement of copyright law their top priority. They should also heed lessons learned in software copy protection, and abandon the desire for "perfect" copy-protection in favor of multiple measures that are "good enough" to stop the most costly piracy. The Recording Industry Association of America (RIAA), for instance, states that 3 percent of computers online account for 97 percent of the music uploaded to popular file sharing networks. For digital music, it may well be "good enough" to stop 97% of the piracy while offering value and flexibility to customers who pay for their music and play by the rules.

Towards DRM: A marathon, not a sprint.

Market forces are driving a convergence of interests among software developers, device makers, and content owners. But don't expect convergence to arrive at a single solution that attracts millions of customers with its first release. It's going to take an evolutionary process where multiple, parallel experiments are tested and refined in the marketplace to determine winning solutions. Some promising solutions are already evolving, such as the eXtensible rights Markup Language (XrML), an industry standard that works on a variety of media devices, as well as tools like Microsoft's Rights Management Server, Sightsound's technology for collecting DRM license payments, and Intertrust's comprehensive Rights/System product.

Policy Recommendations for Digital Rights Management.

The market-driven evolution of digital rights solutions is going to happen in fits and starts, so Congress is going to be pressured to intervene or change the copyright rules. The Association for Competitive Technology offers these recommendations to help you resist the pressure:

- Don't change the Digital Millennium Copyright Act (DMCA), which protects digital content while allowing competitors to develop compatible products.
- Don't expand the rights of content users beyond the current legal doctrine of "fair use."
- Don't bet on the "honor system" to enforce "first sale" of digital goods. That is, if someone sells you a copy of digital content they've purchased, there's no way to require them to delete their original copy.
- Don't try to mandate or manage technology standards, an approach which simply cannot keep up with technology innovation and changing consumer demands.