

# Digital Rights Management

Digital Rights Management (DRM) technology is software or other technology designed to prevent unauthorized access to or use of proprietary content. The subject of DRM has generated a great deal of controversy, particularly due to legislative proposals to mandate the use of DRM or the use of a particular form of DRM. The Computer & Communications Industry Association (CCIA) recognizes that controlling access to copyrighted material is important for many inside and outside of our industry. DRM is an important tool for copyright owners to protect their intellectual property, but we are concerned that DRM has been viewed as a solution to all copyright infringement and that DRM technology is something that should be regulated by the government.

Generally, DRM technology refers to any anti-circumvention device that is used to protect copyrighted material from unauthorized access or use. Examples of DRM are the CSS encryption system, which is designed to thwart copying of DVDs; Microsoft's product activation system, which prevents installation of Windows XP on multiple machines; or protections placed on eBooks to limit how many times they can be read. Other potential uses for DRM are for secure distribution of text documents to prevent unwanted readers from discovering the content.

The integrity of DRM technologies is protected by §1201 of the Digital Millennium Copyright Act (DMCA), which prohibits the manufacture of devices that circumvent access and copy controls. During congressional consideration of the DMCA, CCIA and others argued that circumvention of DRM technologies should be permitted when the user seeks to make a noninfringing use of the work. However, the DMCA as enacted permits circumvention only in certain, limited circumstances, such as security testing and achieving interoperability between programs.

One of the essential shortcomings of DRM is the impossibility of creating a fail-proof or "un-crackable" DRM technology. It is quite common for instructions on how to bypass various DRM technologies to appear on the Internet within days, if not hours, of the release of a DRM technology. For practical purposes, this means that any person willing to expend the time and energy to break the copy-protection technology can do so. Thus, DRM at best can keep honest people honest, which includes the vast majority of users.

However, we have significant concerns that DRM could frustrate fair use privileges that are codified in statute and recognized by a long line of legal cases. For example, suppose a professor wants to copy clips of movies that appear on DVDs to make a presentation for educational use. This clearly is allowed under §107 of the Copyright Act, yet the DRM on the DVD prevents this lawful use. If the professor has the technological sophistication to circumvent the DRM, he violates the DMCA. We believe that the circumvention of DRM devices for noninfringing purposes should be permitted, and we support various legislative proposals to that effect (e.g., H.R. 107 (Boucher); H.R. 1066 (Lofgren)).

CCIA is also troubled by the anticompetitive impact that DRM technologies may pose. Microsoft has publicly stated its plan to incorporate DRM in future versions of its operating systems and its proprietary media format. If Microsoft or any other company can successfully leverage monopoly power to create a proprietary DRM standard, it will effectively lock out competitors from offering rival media players and formats. Similarly, we are extremely concerned about the proposed "broadcast flag," which would be attached to nearly all high-definition television broadcasts. Under this proposal, approval of broadcast flag "compliant" devices would be placed under the control of the largest motion picture companies and a handful of electronics companies. The plan would limit innovation in consumer electronics and PCs, slow convergence between the two classes of devices, and hobble the already troubled transition to HDTV. Worst of all, it would cost society billions of dollars while simultaneously failing to protect HDTV programming from the illicit copying and redistribution it is supposed to prevent.

We also oppose efforts to create a Federal government-mandated DRM standard. The DMCA's "no mandate" provision reflects this policy, but last year Senator Hollings (D-SC) proposed legislation that would have required an FCC-approved DRM system in every digital media. CCIA will continue to oppose any effort of the Government to mandate DRM as we believe the market provides the best avenue for the success or failure of DRM. For more information about CCIA and its position on this and other intellectual property issues, please visit <http://www.cciainet.org/ip.php3> or contact CCIA Vice President & General Counsel Jason Mahler at (202)783-0070.