

DRM and Public Policy: The Need for Greater Public Engagement

Congress and the FCC are being asked to make a series of critical decisions regarding the protection of copyright in the digital world. These decisions will define how Americans watch TV, listen to music, and use their computers for decades to come.

Widespread online piracy of copyrighted works poses real threats to the creators and distributors of content. At the same time, technological and regulatory proposals to protect copyright have raised difficult questions about potential impacts on competition, innovation, public values, and consumer uses of copyrighted content. DRM technology offers great promise in protecting content and supporting new business models, but also great peril in exacerbating these potential impacts.

Debate about DRM and copy protection is already moving forward in both public venues (like the FCC broadcast flag NPRM) and private forums (like the CPTWG technical discussions). Unfortunately, the voices of consumers, computer users, and the public in general have not played a significant role in discussion of these issues.

CDT, in conjunction with Public Knowledge and Consumers Union, has had in-depth one-on-one discussions with over thirty companies and other interests aimed at developing balanced consumer perspectives on digital copyright questions. In this dialogue, several key themes are emerging:

1. Need for content protection. Significant consumer benefits flow from providing adequate incentives to the producers and distributors of content. Failure to protect those incentives could undermine the viability of major content industries, depriving the public of artistic and cultural output.
2. Future innovation. The makers of information technology and consumer electronics products, as well as consumers generally, want to ensure that innovation and creativity continue to prosper as we consider new content protection methods. In particular, the creation of "gatekeepers" who might block new products or business models -- including government mandates on technology development -- should be avoided.
3. Reasonable uses of content. Depending on the medium and the marketplace, consumers may reasonably expect to be able to time-shift, space-shift, fast-forward and rewind, and make other uses of content. In the future, uses not yet envisioned may become expected, such as the secure online transmission of content to a friend or family member. Providing for reasonable uses, including as-yet-unknown uses, is an important value.
4. Public interest values. The free flow of information online, the right to free expression, and the ability of citizens to access information and ideas as well as publicly-important programming deserve consideration when evaluating copyright protections.

Copyright protection mechanisms, whether implemented through law or technology, will not gain public acceptance without appropriately balancing these four principles. We are not convinced that many of the proposals currently under discussion achieve the necessary balance. CDT looks forward to contributing to further debate about these critical issues.

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