

Digital Rights Management: Whose Rights Are Being Managed?

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“Digital rights management” (DRM) systems use technology to prevent copying, limit the number of copies, or track copies for payment. DRM *directly* protects content creators and distributors, and thus *indirectly* helps consumers seeking content, just as fences help lettuce farmers directly, and salad eaters indirectly.

The Paradox of Packaging: Secure Content is Content Available to Consumers. DRM helps content producers “package” goods; without packaging, the goods might not be offered at all. Passwords and content protection made electronic libraries like Lexis-Nexis possible. Without DRM, we are unlikely to see the video or audio equivalent of Nexis.

Creators and Distributors free speech rights include the right to use DRM. The First Amendment protects the right of private-sector speakers to speak or *not* to speak. A newspaper editor may print a letter to the editor, print it in French, or not print it at all. Likewise, the right to use DRM is protected by first amendment rights of free speech. (Some argue that DRM systems violate the First Amendment. But the Constitution limits only the power of government; it doesn’t apply to private-sector packaging choices. Bridal magazines are often wrapped in plastic so that brides must buy to look inside, but this hardly violates the constitutional rights of brides.)

Competition between creators and consumer demand limit “excessive” DRM. The potential harm of DRM to consumers has been overblown. Consumers will resist systems that do not allow them to quote from a text or listen to a song in their car. Many restrictions on media use have failed because they annoy consumers. Flexibility is popular and people are willing to pay for it. And content producers compete fiercely for a wide audience for their content. Economic forces will beat legal safeguards for “fair use.”

Ill-considered privacy laws or lawsuits could hurt consumer and creators interest in DRM alike. E-commerce means more interactions between anonymous strangers. To understand customers and stop fraud, businesses often need more information than today’s networks supply. DRM systems that tag users and files can offer real solutions to real security problems. Inflating privacy into a bar to DRM because databases make some people nervous does consumers a disservice. There is no reason to freeze content distribution technology as it was during the late twentieth century.