

From: **Home Recording Rights Coalition**

One Pager On: **Digital Rights Management: Whose Rights Are Being Managed?**

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***RATHER THAN “MANAGE” CONSUMER RIGHTS, CONGRESS SHOULD  
REAFFIRM FAIR USE AND EMPOWER CONSUMERS***

Content owners are increasingly seeking to manage and limit consumer rights through unilateral legislative and regulatory initiatives. Congress should ensure that longstanding consumer expectations are preserved, and that consumer electronics and information technology companies continue to have the freedom to design exciting new products for consumers.

***Transition to High-Definition Television (HDTV).*** Over five million consumers have purchased HDTV displays. Some content owners are seeking restrictions on the ways consumers can use these displays in the privacy of their homes. They are pushing proposals that would give themselves the ability to select which outputs from a set-top box or a recorder to a display would be turned off, on a program-by-program basis, without consent of the consumer. They also are seeking the ability to limit consumers to viewing a picture with an inferior resolution (a “downres’d” picture). Congress should block such impositions on consumers, and demand that the FCC, as it approves the important “Plug & Play” agreements, do so as well.

***“Copy-Protected CDs”.*** Ostensibly to stop consumers from engaging in “piracy,” some record companies sell discs that look like traditional audio compact discs, but don’t play in computers, DVD players, and other consumer electronics products. Congress should adopt legislation, such as H.R. 107 and S. 692, requiring record companies selling or advertising these non-standard music discs to provide adequate consumer labels and to establish procedures to assist consumers who find they can’t play them on ordinary home devices.

***Fair Use/Tech Mandate Legislation.*** Congress should reject heavy-handed bills that would put bureaucrats in charge of picking technology winners and losers, and which would outlaw many popular products that don’t integrate undefined “anti-piracy” measures. Instead, Congress should leave it to the private sector to establish appropriate technologies that protect content while preserving consumers’ legitimate expectations with respect to home recording and other reasonable and customary practices. In addition, Congress should embrace legislation, such as H.R. 107, which would encourage technological innovation by ensuring that manufacturers may bring to market devices capable of substantial non-infringing uses, even if the product can also be used to infringe a copyrighted work, and H.R. 1066, which would safeguard the rights and expectations of consumers who lawfully obtain digital entertainment.

***Useful DRM Precedent.*** In thinking about any legislation that would limit consumer choice and manufacturer freedom to innovate, Congress should use section 1201(k)(1) of the DMCA as a model. It contains explicit “encoding rules” that limit when content owners may block or restrict copying so as to preserve long-standing consumer expectations. By preserving consumer expectations and providing content owners with specific legal support for the use of DRMS, section 1201(k) strikes the appropriate balance that should serve as a template for future legislation.