

Progress & Freedom Foundation

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DRM technologies enable suppliers of digital media products (CDs, DVDs, games, books, magazines, software) to prevent unauthorized use. Access can be limited to a specified machine or password, or to specific rights, such as a set number of viewings, a limited time period, a defined number of copies.

Alarmists claim that DRM will allow media companies to impose onerous limits on the use of digital media products. They say that content owners will use DRM to charge separately for each use -- for example, charging for each viewing of a video rather than selling a DVD for unlimited viewing. They also suggest that other uses, such as making copies and exercising "fair-use" rights, will no longer be available at all. Some members of Congress have responded to this outcry with legislative proposals to restrict the use of DRM.

These alarmists fail to appreciate the promise of DRM technology, and its vast benefits for both consumers and content creators. When providers have an ability to protect content and define the rights conveyed to the purchaser precisely and efficiently, they are better able to meet diverse consumer preferences by offering a wider array of digital media products.

Consumers have diverse tastes. Some prefer more rights at higher prices, while others prefer fewer rights for less money. Efficient markets should cater to this range of preferences. A movie can be seen in the theater, by purchasing a DVD, by rental, on pay-per-view, or on commercial TV. DRM will promote even greater variety. At present, a book can be purchased for \$25 in hardcover, or for \$10 in paperback in a year. Under DRM, new options will exist: for example, a single-reading right for \$2.

Competition among providers of entertainment content, which is plentiful, will ensure that producers maximize variety and service to consumer interests even as they pursue profits. Rivalry abounds in supplying digital media products such as music, movies and games. While markets won't produce perfect results, government will make matters worse by dictating the bundles consumers must buy.

Anti-DRM legislation would abort these promising developments. It would also undermine the development of effective tools to rein in the epidemic of piracy on the Internet. The key problem facing online distribution is not excessive control but the virtual absence of control. Granting consumers rights to circumvent DRM protection would undermine the capacity of technological safeguards to solve this fundamental problem. For example, bills that create exemptions to the Digital Millennium Copyright Act to enable consumers to use devices designed to defeat DRM protection to make noninfringing uses of a copyrighted work will also enable access for infringing uses.

Proponents justify these proposals by asserting a need to ensure that consumer rights and expectations developed in the analog era will be preserved in the new digital environment. But they often overstate what legal rights consumers have in the analog environment. For example, the legal concept of fair-use rights has usually been applied not to consumer uses but to transformative uses -- the use of intellectual products to create yet more intellectual product.

The great failing of the anti-DRM forces is their tendency to look backward, at an analog world whose technologies provided a lower quality experience and contained inherent limitations on uses, including copying and distribution. The correct focus is on finding how to best take advantage of the expanded opportunities to serve consumers in the digital age.