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The DMCA Revisited: What's Fair?

With content owners increasingly seeking to manage and limit consumer rights, including using the DMCA to limit consumer freedoms, Congress should ensure that longstanding and reasonable consumer expectations to enjoy the products they have purchased are preserved, and that consumer electronics and information technology companies continue to have the freedom to design exciting new products for their customers. By enacting H.R. 107, Congress can restore consumer freedoms and promote innovation.

The Problem. In 1998, entertainment and media industry giants began an effort to persuade Congress to restrict private and public use of books, music, and other material when they are in digital form. The “anticircumvention” provisions of the DMCA have proven overly broad, and are not being used as Congress intended. Instead of targeting pirates, they are being directed against ordinary consumers, scientists, and educators, as well as business competitors engaged in a range of legal activities.

Limits on Consumer Freedoms. Here are some of the problems Americans face as a result of today’s new unbalanced copyright environment, compounded by enactment of the DMCA:

- Consumers buy new “copy-protected” Compact Discs unaware they may not play in their PCs or automobile CD players.
- Innovators are blocked from bringing legitimate competitive products to the market, even where no exploitation of a copyrighted work is involved. For example, competitors eager to keep less expensive alternatives away from consumers have sued manufacturers of generic garage door openers and printer cartridges under the DMCA.
- Venture capitalists refuse to fund legal and innovative technologies for fear of DMCA lawsuits.
- Families are prohibited from fast-forwarding through the advertisements at the beginning of DVDs that they bought and own.
- The fundamental right of Americans to buy legal products such as VCRs and digital video recorders are in jeopardy as media giants have declared war on the Supreme Court's landmark *Betamax* ruling. Concerns that H.R. 107 will chill the use of lawful “DRM” technologies are overblown – these are still subject to patent protection and contracts negotiated in the free market.

What's Fair? Congress should enact H.R. 107. The Boucher-Doolittle bill would take vitally necessary steps to restore the balance that now leans so heavily in favor of content owners and against consumers and innovators. It would ensure that consumers can make “fair use” of digital content, just as they could for decades with analog content. That is only right. In fact, it is only fair.