

August 4, 2000

The following comments are in response to the request of the Copyright Office regarding Sections 109 and 117. The questions posed by the Copyright Office are in *italics*, while my comments are in **bold**.

1. Section 109

(a) What effect, if any, has the enactment of prohibitions on circumvention of technological protection measures had on the operation of the first sale doctrine?

"It alters the intended effect of the first sale doctrine by allowing the copyright holder to insist that each subsequent 'owner' obtain a new authorization."

(b) What effect, if any, has the enactment of prohibitions on falsification, alteration or removal of copyright management information had on the operation of the first sale doctrine?

"None. It is reasonable to retain proper attribution to the original author."

(c) What effect, if any, has the development of electronic commerce and associated technology had on the operation of the first sale doctrine?

(d) What is the relationship between existing and emergent technology, on one hand, and the first sale doctrine, on the other?

"New technologies do not affect the first-sale doctrine any more than previous technologies."

(e) To what extent, if any, is the first sale doctrine related to, or premised on, particular media or methods of distribution?

(f) To what extent, if any, does the emergence of new technologies alter the technological premises (if any) upon which the first sale doctrine is established?

"To no extent at all."

(g) Should the first sale doctrine be expanded in some way to apply to digital transmissions? Why or why not?

"It should not be expanded at all. If the concern is about the original owner keeping a copy after the fact, this is not a new issue. It has always been incumbent upon the individual to follow through with their obligation."

(h) Does the absence of a digital first sale doctrine under present law have any measurable effect (positive or negative) on the marketplace for works in digital form?

"No. It is not the absence of a new law that has affected the marketplace, it is the absence of persons, both corporate and private, adhering to existing law."

1. Section 117

(a) What effect, if any, has the enactment of prohibitions on circumvention of technological protection measures had on the operation of section 117?

"The fair-use privileges granted by US Code, Chapter 17, Section 117(a)(2) can be criminalized at the whim of the copyright holder. There appears to be no limit to the interpretation of what is covered, ranging from simple archive viewers to tamper-resistant fasteners to complex file formats, even retroactively."

(b) What effect, if any, has the enactment of prohibitions on falsification, alteration or removal of copyright management information had on the operation of section 117?

(c) What effect, if any, has the development of electronic commerce and associated technology had on the operation of section 117?

"None."

(d) What is the relationship between existing and emergent technology, on one hand, and section 117, on the other?

(e) To what extent, if any, is section 117 related to, or premised on, any particular technology?

(f) To what extent, if any, does the emergence of new technologies alter the technological premises (if any) upon which section 117 is established?

"Section 117 is not premised on technology. However, copy-protection methods have grown more complex, making the individual work harder to retain fair-use privileges. Anti-circumvention legislation now makes it a legal minefield."

2. General

(a) Are there any additional issues that should be considered? If so, what are they and what are your views on them?

"I am concerned that the prohibition on circumvention of technical protection measures (TPM's) effectively creates a new class of intellectual properties, one that I am not allowed to study. It is not a copyrighted work, because that is what is being protected. It is not a patented work, because it would have been disclosed. It is not a trade secret, because it is prohibited to be independently discovered. This new class of works has a vague definition, which allows it to be applied to a wide variety of situations in ways that I don't believe were intended, and I am restricted from examining these new works even while asserting my section 117 privileges."

(b) Do you believe that hearings would be useful in preparing the required report to Congress? If so, do you wish to participate in any hearings?

"Yes, but only if that hearing has the jurisdiction to urge repeal of the prohibition of circumvention of TPM's, or has the effect of exempting all classes of works from the prohibition. If I can further this cause by my participation, I would be honored."

Thank you,

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