

**Reply to comments of Przemek Klosowski, Ph.D.** on the effects of the amendments made by title 1 of the Digital Millennium Copyright Act, ("DMCA") and the development of electronic commerce on the operation of sections 109 and 117 of title 17, United States Code, and the relationship between existing and emerging technology and the operation of such sections.

Dr. Klosowski writes: "...the anti-circumvention rule does not protect IP---it is already protected by the previous law. Instead, DMCA protects the control of delivery of IP. For instance, the content brokers can prevent the consumer from fast-forwarding over commercial advertisements included in the IP that the consumer purchased."

I support Dr. Klosowski's position, but I believe that there is much more at stake here than preventing consumers from fast-forwarding over commercials. The technical protection measures that DCMA addresses can also be used by foreign governments to prevent unwanted content from being viewed by its residents. This is the digital-millennium equivalent of the jamming of Radio Free Europe during the Cold War. An attempt by a US Citizen to bypass those measures, for example by buying a DVD movie about Tibet and re-coding it so that it is playable by a Chinese-zoned DVD player, could be prosecuted under DCMA as an act of circumvention. The tools for producing such a re-coded DVD are similarly proscribed under this law, as interpreted by its supporters and US district Judge Kaplan.

Here is the testimony of Dean Marks, Senior Counsel, Intellectual Property for Time Warner, given at the Stamford Library of Congress hearing on DCMA (transcript page 262):

1           MR. MARKS: Another reason why we need  
2 regional coding, why we do regional coding is that  
3 the law in various territories is different with  
4 regard to censorship requirements. So we cannot  
5 simply distribute the same work throughout the world  
6 in the same version. Local laws impose censorship  
7 regulations on us that require us to both exhibit  
8 and distribute versions of the films that comply  
9 with those censorship requirements.

The DCMA makes violations of the censorship laws of every dictatorship in the world enforceable against US Citizens in US Courts. This violates the "first sale" doctrine and is an outrage in a country that professes to promote freedom throughout the world.

Respectfully submitted,

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