

# The Digital Millennium Copyright Act of 1998

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# DMCA Overview

- The DMCA amended title 17 of the US Code to extend the reach of copyright, while limiting the liability of Online Providers from copyright infringement by their users.
- Criminalizes the circumvention of measures taken to protect copyright.
- Heightens the penalties for copyright infringement on the Internet.
- On May 22, 2001 the European Union passed the EU Copyright Directive or EUCD, similar in many ways to the DMCA.

# DMCA Summary

- Title I: implements the WIPO treaties;
- Title II: creates limitations on the liability of online service providers; anti-circumvention measures
- Title III: creates an exemption for making a copy of a computer program by activating a computer for purposes of maintenance or repair.
- Title IV: misc. provisions relating to Copyright Office functions, etc.
- Title V: creates new form of protection for the design of vessel hulls.

# DMCA Title II: 17 USC Ch.12

- 1201(a)(1), prohibits *the act* of circumventing a technological measure used by copyright owners to control access to their works
- 1201(a)(2) and 1201(b) outlaw the manufacture, sale, distribution or trafficking of *tools and technologies* that make circumvention possible

# Penalties / Liability

- §1203, 1204 provide BOTH civil and criminal liability;
  - Civil: temporary & permanent injunctions;
    - Actual damages and any addt'l profits of the violator;
    - Statutory damages:
  - Criminal: fines up to \$500,000 and/or 5 yrs in prison for 1st violation;
    - Fines up to \$1,000,000 and/or 10yrs for subsequent violation.

# Results of DMCA Title II

- DMCA's Unintended Consequences Have Greater Impact than Intended Affect (preventing infringement)
  - Chills Freedom of Expression and Scientific Research
  - Restricts Private Copying Rights
  - Creates Monopolies – Impedes Competition
  - Stifles Innovation

# Chills Freedom of Expression and Scientific Research

- Secure Digital Music Initiative (SDMI) issued challenge to defeat digital music protections.
- Princeton Professor Edward Felten and a team of researchers at Princeton, Rice, and Xerox accepted challenge and succeeded.
- When the team tried to present their results at an academic conference, SDMI representatives threatened the researchers with liability under the DMCA.

# Chills Freedom of Expression and Scientific Research

- Hewlett-Packard resorted to Section 1201 threats when researchers published their discovery of a security flaw in HP's Tru64 UNIX operating system;
- In April 2003, educational software company Blackboard Inc. used a DMCA threat to stop the presentation of research on security vulnerabilities in its products at the InterzOne II conference in Atlanta

# Chills Freedom of Expression and Scientific Research

- In 2003, U.S. publisher John Wiley & Sons dropped plans to publish a book by security researcher Andrew "Bunnie" Huang, citing DMCA liability concerns.
  - Wiley commissioned Huang to write the book which analyzes security flaws Huang discovered in the process of reverse-engineering the Microsoft X-Box game console.

# Chills Freedom of Expression and Scientific Research

- In July 2001, Russian programmer Dmitry Sklyarov was jailed for several weeks and detained for five months in the United States after speaking at the DEFCON conference in Las Vegas.
  - Prosecutors, prompted by Adobe Systems Inc., alleged that Sklyarov had worked on a software program that allowed owners of Adobe electronic books ("e-books") to convert them from Adobe's e-Book format into Adobe Portable Document Format ("pdf") files, thereby removing restrictions embedded into the files by e-Book publishers.

# Restricts Private Copying Rights

- Fair Use / Fair Dealing / Personal Use Copying Rights Restricted
  - DVDs: No personal use copying permitted
    - (back-ups, educational use)
  - CDs: Copy-restricted CDs – private copying rights restricted
    - (“mix-tapes” or back-ups)
    - Playback-restricted CDs – designed to “not play” on computers, car stereos, portable devices

# Creates Monopolies – Impedes Competition

- Lexmark v. Static Control Components
  - Lexmark obtained a DMCA injunction banning printer microchip manufacturer Static Control Components from selling chips it claimed were "technology" which "circumvented" certain "authentication routines" between Lexmark toner cartridges and printers.
  - Lexmark added these authentication routines explicitly to hinder aftermarket toner vendors.

# Stifles Innovation

- In 1999, Sony sued Connectix Corporation, the manufacturer of the Virtual Game Station, an emulator program which allowed Sony Playstation games to be played on Apple Macintosh computers.
  - Sony also sued Bleem, the leading vendor of Playstation emulator software for Windows PCs.
- Sony has also invoked the DMCA against a hobbyist who developed custom programs for Sony's Aibo robotic "pet" dog

# Efforts to Repeal DMCA

- Digital Media Consumers Rights Act (DMCRA)  
HR-107
  - Permit circumvention for private copying (fair use)
  - Permit circumvention for security research
- The bill was reintroduced into Congress once again on March 9, 2005 as H. R. 1201, the 'Digital Media Consumers Rights Act of 2005'.