

COPYRIGHT OWNERS GET GREEN LIGHT TO ROLL WITH TECHNOLOGICAL PROTECTION MEASURES AT CONSUMER EXPENSE

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October 26--Washington, D.C. Today, the Digital Future Coalition (DFC) expressed its appreciation to the Librarian of Congress for seeking to preserve the fair use rights of information consumers, while expressing its deep disappointment that content owners effectively had been given a green light to use technological protection measures to lock up access to copyrighted works.

"Once again, content owners have successfully promoted their own narrow financial interests over the broader public interest in preserving consumer access to literary, scientific, and other works," said Professor Peter Jaszi of the DFC. He continued: "As the Assistant Secretary of Commerce for Communications and Information outlined so eloquently on behalf of the Administration in a recent letter to the Register of Copyrights, preserving the principle of fair use in the information age would encourage a renaissance of research, academic, and educational freedom, just as it promoted the progress of science and the useful arts throughout the analog era. In our view, something profound is lost when fair use is diminished. Today, consumers find themselves one step closer to the pay-per-use society envisioned by copyright owners."

Noting that "potential damage to scholarship may well ensue in the course of a three-year period," before the next scheduled rulemaking, and that "the statute places considerable burdens on the scholarly, academic, and library communities," the Librarian of Congress himself today announced his intent to request Congressional review of the time frame of the rulemaking, the appropriate criteria for assessing the harm that could be done to American creativity by the anti-circumvention provision, and called for more clarity concerning the definition of "class of works."

The DFC recognized that the Register and her staff had labored under difficult circumstances in attempting to implement section 1201(a)(1) of the Digital Millennium Copyright Act (DMCA) in a manner consistent with Congressional intent. However, the organization also noted that in enacting the DMCA, Congress had expressed strong concern for the preservation of the fair use doctrine and other traditional copyright doctrines that promote public access to information. The DFC expressed regret that the Copyright Office had failed to capture the spirit of this legislation in interpreting it for the Librarian.

Section 1201(a)(1) was drafted to allow exemptions from the prohibition on circumvention of technological protection measures for "persons who are users of a copyrighted work which is in a particular class of works, if such persons are, or are likely to be . . . adversely affected by virtue of such prohibition in their ability to make non-infringing uses of that particular class of works . . ." It should have been possible to exempt, for example, copies of works that universities and libraries purchase when their students or patrons subsequently seek to make non-infringing uses of those works. Unfortunately, today's decision took 70 pages to essentially say that few persons may ever circumvent a technological protection measure — even to gain access to a work solely for legitimate noncommercial purposes.

In concluding, Professor Jaszi said: "We hope Congress now recognizes that it may have gone too far in drafting the DMCA to accommodate the interests of copyright owners without including adequate safeguards to protect the legitimate interests of information consumers. As it considers amendments to the DMCA next year, we trust the 107th Congress will seek to recalibrate the DMCA to bring it more in keeping with the grand tradition of balance that has served our nation so well for the past two centuries."

Founded in 1995, the Digital Future Coalition consists of forty-two national organizations representing a wide range of non-profit and for-profit entities. Its membership represents educators, computer and telecommunications industry businesses, librarians, archivists, authors, and scientists. DFC is committed to striking an appropriate balance in law and public policy between protecting intellectual property and affording public access to it.

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