

# Statement of Congressman Rick Boucher: "PAY-PER-USE" SOCIETY ONE STEP CLOSER

News from Congressman Rick Boucher  
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I regret the decision of the Librarian of Congress, acting upon the recommendation of the Register of Copyrights, to reject the recommendations of the Administration, concerned Members of Congress, universities and libraries in announcing a decision that does not protect traditional fair use rights. This disappointing decision has moved our Nation one step closer to a "pay-per-use" society that threatens to advance the narrow interests of copyright owners over the broader public interest of information consumers.

In crafting section 1201(a)(1) of the Digital Millennium Copyright Act, Congress sought to preserve the principle of "fair use" that has served our Nation so well for more than a century. Unfortunately, based on the advice of the Register of Copyrights, the Librarian of Congress today announced his decision to limit the ability of ordinary consumers in most cases to circumvent electronic security measures for the purpose of exercising their non-infringing fair use rights. Consequently, any person who circumvents a technological protection measure to gain access to information to which he has a fair use right will be guilty of a crime.

I was heartened recently when the National Telecommunications and Information Administration in the U.S. Department of Commerce, speaking for the Administration, so forcefully articulated the importance of preserving fair use principles in the 21st century. NTIA made useful recommendations to the Register of Copyrights for implementing section 1201(a)(1) in a manner which would have protected fair use rights. For a moment, it appeared that the rulemaking might advance the interests of information consumers. Those hopes have now been dashed.

As NTIA recognized in its letter, one of the foremost concerns reflected in the Congressional report upon passage of the DMCA was that changes in the law could chill the exercise of consumers' traditional "fair use" rights, and move us all toward a "pay-per-use" society. Congress recognized that some limits had to be placed on the anti-circumvention provisions of the DMCA to ensure that librarians, educators, the scientific community, and other information consumers could continue to gain legitimate access to a variety of works likely to be protected through the use of technological measures. Section 1201(a)(1) was, therefore, included to exempt from the prohibition on circumvention "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 ..." The Librarian was charged by the statute with defining the classes of works likely to be at risk.

Under this grant of authority, it should have been possible to exempt, for example, copies of works purchased by universities and libraries when their students or patrons subsequently seek to make non-infringing fair use of those works. Unfortunately, the announced exceptions to the rule are so narrow as to be practically meaningless. Fair use is not protected.

There is little doubt that the 107th Congress will consider proposed revisions to the DMCA. Given the importance of fair use to society as a whole, my hope is that Congress will re-calibrate the DMCA to balance more evenly the interests of copyright owners and information consumers. With today's failure

of the Library of Congress to protect the public's fair use rights, Congress in its next session should act to prevent the creation of a "pay per use" society, in which what is available today on the library shelf for free is available in the future only upon payment of a fee for each use.

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