Dear Sir or Madam:

I believe that the portion of the Digital Millennium Copyright Act, Public Law 105-304 (1998) (hereafter referred to as the DMCA) that you have requested comments be made on,

"No person shall circumvent a technological measure that effectively controls access to a work protected under this title."

should never have been codified into law as it serves no legitimate public interest. Laws regarding the misappropriation of copyrighted works already existed and could have been applied to digital media as well as more traditional media forms. The only purpose this portion of the DMCA serves is to provide copyright holders a means to deny the public access to "Fair Use". For many years this country has worked to strike a balance between the rights of copyright holders and that of consumers and the public at large. The courts have repeatedly thwarted the interests of copyright holders to hold a total monopoly in perpetuity of all uses of copyrighted material by legitimate consumers. This portion of the DMCA effectively gives copyright holders the means to bypass years of jurisprudence and strip consumers and the public of any rights whatsoever. While the congressional record clearly reflects that it was never congress' intention to repeal "Fair Use" of copyrighted works, already United States District Judge Lewis A. Kaplan has stated the following interpretation of this portion of the DMCA; (http://www.eff.org/IP/Video/MPAA_DVD_cases/20000202_ny_memorandum_order.html original source: http://www.nysd.uscourts.gov/courtweb/pdf/00-01149.PDF)

"..., the legislative history makes it abundantly clear that Section 1201(f) permits reverse engineering of copyrighted computer programs only and does not authorize circumvention of technological systems that control access to other copyrighted works, such as movies.[21] In consequence, the reverse engineering exception does not apply. "

and even more ominously,

"...*e. Fair use*

Finally, defendants claim that they are engaged in a fair use under Section 107 of the Copyright Act.[27] They are mistaken.

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27 Def. Mem. at 12. See 17 U.S.C. § 107.

Section 107 of the Act provides in critical part that certain uses of copyrighted works that otherwise would be wrongful are "not . . . infringement[s] of copyright."[28] Defendants, however, are not here sued for copyright infringement. They are sued for offering to the public and providing technology primarily designed to circumvent technological measures that control access to copyrighted works and otherwise violating Section 1201(a)(2) of the Act. If Congress had meant the fair use defense to apply to such actions, it would have said so. "

So as you can clearly see it has already begun. Copyright holders who would have previously lost an action undertaken to prevent "Fair Use" now have the option of suing and, if Judge Kaplan's opinion becomes law, of winning simply by outlawing the means to achieve "Fair Use". In an earlier age it would be equivalent to suing the people who made photocopiers, or audio tape recorders, or video cassette recorders. (the last one was already fought and lost see: Supreme Court decision in Sony v. Universal Studios 464 U.S. 417 (1984)). Were the DMCA in effect in 1984, video cassette recorders most likely would not now exist as they would have been found in violation of this provision. It doesn't matter if you have the "Fair Use" right to make a copy of a copyrighted work that you have legally purchased for your own use if the technology needed to exercise that right is deemed illegal.

Barring the DMCA being found unconstitutional by the courts, or repealed by Congress, the Librarian of Congress is our only hope to keep possession of the "Fair Use" rights we have come to expect and enjoy in this country.

Section 1201(a)(1) of the Copyright Act, 17 U.S.C. which was added by the DMCA provides that the Librarian of Congress may exempt certain classes of works from the prohibition against circumventing a technological measure that controls access to a copyrighted work. I would emplore the Librarian of Congress to exempt **ALL** classes of works: textual, video, audio, and any composite thereof. Only in this was can we hope to maintain the means to utilize, and therefore maintain, our "Fair Use" rights in the coming years.

There are those, especially the representatives of major copyright holders, who will argue that this will allow large scale abuses of their rights granted by holding a copyright. To that I would answer that illegally violating a copyright is already illegal. Current law can be used to prosecute violators. All that excepting all classes of works from this onerous provision of the DMCA does is prevent them from denying law abiding consumers access to their "Fair Use" rights for copyrighted items that they have legally purchased.

Thank you for your time in this matter.

Humbly yours,

Richard Coleman
Maine USA