

Digital Millennium Copyright Act Issues for Libraries

Toledo Area Library Association

May 12, 2004

Corey Seeman

University of Toledo

corey.seeman@utoledo.edu

<http://library.utoledo.edu/userhomes/cseeman/>

Digital Millennium Copyright Act



Overview

- Copyright basics
- Copyright chronology
- What is the Digital Millennium Copyright Act?
- What does it really mean for libraries?

Digital Millennium Copyright Act



Copyright Basics

Copyright protects "original works of authorship" that are fixed in a tangible form of expression. The fixation need not be directly perceptible so long as it may be communicated with the aid of a machine or device. Copyrightable works include the following categories:

1. literary works;
2. musical works, including any accompanying words
3. dramatic works, including any accompanying music
4. pantomimes and choreographic works
5. pictorial, graphic, and sculptural works
6. motion pictures and other audiovisual works
7. sound recordings
8. architectural works

Digital Millennium Copyright Act



Copyright Chronology

- 1790 -First copyright law enacted under the new U.S. Constitution.
- 1909 - Third general revision of the copyright law.
- 1976 – Copyright Act
- 1998 – Sonny Bono Copyright Term Extension Act
- **1998 – *Digital Millennium Copyright Act***
- 2002 - Technology, Education and Copyright Harmonization Act (TEACH)

Digital Millennium Copyright Act



What is the DMCA?

- Initial intent of the DMCA →
 - Curtail piracy of copyrighted material
 - Deal with prevalence of digital media
 - Acknowledge the means by which copyrighted material can be illegally and quickly spread around the globe
- Potential Impact of the DMCA →
 - ‘Technological shackles’ on libraries and people who would ‘honestly’ share resources.

Digital Millennium Copyright Act



What is the DMCA?

- Title I - WIPO (*World Intellectual Property Organization*) Copyright and Performances and Phonograms Treaties Implementation Act of 1998
- Title II - Online Copyright Infringement Liability Limitation Act
- Title III - Computer Maintenance Competition Assurance Act
- Title IV - Six miscellaneous provisions
- Title V - Vessel Hull Design Protection Act

Digital Millennium Copyright Act



What is the DMCA?

- Title I - WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998
 - The “big issue” with the law
 - Section 1201 – blocking people from tampering with copyright protections on digital media
 - Includes scholars publishing code for breaking locks on DVDs and other copyrighted material

Digital Millennium Copyright Act



What is the DMCA?

- Title I - WIPO Copyright...
 - Section 1201 prohibits the following types of devices or services that fall within any one of the following three categories:
 - They are primarily designs or produced to circumvent;
 - They have only limited commercially significant purpose or use other than to circumvent; or
 - They are marketed for use in circumventing.

Digital Millennium Copyright Act



What is the DMCA?

- Title I - Section 1201 Exceptions
 - Library/educations exception
 - *(for evaluation prior to authorized purchase)*
 - Reverse Engineering
 - *(to promote interoperability between systems)*
 - Encryption Research
 - *(to ensure stronger means of protection ONLY)*
 - Protection of Minors
 - Personal Privacy
 - Security Testing

Digital Millennium Copyright Act



What is the DMCA?

- Title II - Online Copyright Infringement Liability Limitation Act
- ISP limited liability
- They will not be responsible for:
 - Transitory communications
 - System Caching
 - Storage based on the directions of users (got Napster)
 - Information location tools

Digital Millennium Copyright Act



What is the DMCA?

- Title III - Computer Maintenance Competition Assurance Act
- Established the ability to make a copy of a program during the maintenance or repair of a computer (yeah like that ever happens)
- Saved in a 'state of nature' as opposed to the system code.

Digital Millennium Copyright Act



What is the DMCA?

- Title IV - Miscellaneous provisions
- Ephemeral recordings for broadcasters (hit songs for radio stations)
- Distance Education Study (essentially replaced by TEACH, 2002)
- Webcasting

Digital Millennium Copyright Act



What is the DMCA?

- Title IV - Miscellaneous provisions
- Exemption for Nonprofit Libraries and Archives
 - Libraries retain the right to make preservation copies of documents & material (including digital).
 - *Microfilm master/user copy example*
 - Not to be made available to the public.
 - Libraries can upgrade material into new format as part of preservation.

Digital Millennium Copyright Act



What is the DMCA?

- Title V - Vessel Hull Design Protection Act
- Provides for the protection for original designs of vessel hulls

Digital Millennium Copyright Act



What does DMCA mean for libraries?

- Controlling content delivery vs. Term of copyright protection or content
- Does not change the term of ownership (Sonny Bono Act does that)
- Strongest application has been on preventing encryption breaking software.
 - Prof. Edward Felten (Princeton) establishing means to remove digital watermarks – Could not present research because of suit.

Digital Millennium Copyright Act



What does DMCA mean for libraries?

- Section 1201 Jeopardizes Fair Use
 - Reliance and support of copy-protected CDs and DVDs – *preservation of resources*
 - Law bans all acts of circumvention and technologies that allow libraries to share resources that were ‘honestly’ acquired
- Hinders Competition & Resource Sharing
 - Copyright holder can claim violation to thwart competition.
 - Copyright holder can establish “regionalization” of products to deter resource sharing.

Digital Millennium Copyright Act



What does DMCA mean for libraries?

- Libraries are potentially limited for their process of repackaging for shared use
 - Potential ILL limitations (print vs. electronic ILL transactions)
 - Preservation concerns (can we repair or do we need to replace).

Digital Millennium Copyright Act



Questions?

Corey Seeman
University of Toledo
Corey.seeman@utoledo.edu
419-530-2333

<http://library.utoledo.edu/userhomes/cseeman>

Digital Millennium Copyright Act

