

July 31, 2001

The Honorable Dianne Feinstein
Chair
Senate Committee on the Judiciary
Subcommittee on Technology, Terrorism, and Government Information
SH-807 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Feinstein:

We recently read that you had heard of no credible opposition to the Digital Millennium Copyright Act (DMCA). As the Co-Chairs of the U.S. Public Policy Committee of the Association for Computing Machinery (ACM), we are writing to inform you that ACM has consistently opposed the anti-circumvention provisions of the DMCA. In our view, the overly-broad provisions impede the progress of research in cryptography and other computer security areas by criminalizing multi-use technologies rather than narrowly penalizing infringing behavior.

During consideration of the DMCA by the U.S. Congress and the subsequent rulemaking process, ACM recommended that the anti-circumvention provisions of the legislation be revised to restrict only circumvention directly involved in infringement. We further elucidated other flaws of the Act, including:

- * failure to permit circumvention for "fair-use" purposes is inconsistent with the fundamentals of copyright law and deters individuals from conducting bona fide forms of science and technology research that is fundamental to innovation;

- * exempting encryption research from the anti-circumvention provisions is too limited as the majority of computer security research does not involve encryption; * permitting reverse engineering for the sole purpose of interoperability may criminalize development of software engineering tools and technology with other uses; and,

- * anti-circumvention exemptions that permit circumvention to obtain authorized access to a work are meaningless if access mechanisms and tools cannot be used to do so.

Unfortunately, our concerns were not satisfactorily addressed as the DMCA was enacted or as the implementation rules were promulgated. As a result, scientists are now finding themselves in a position where they must consult attorneys to determine if their previously legitimate research might be in violation of the DMCA. In some instances, the threat of legal action under the DMCA has deterred scientists from publishing scholarly work or even publicly discussing their research. Certain foreign scientists and international members of ACM have indicated they will not attend conferences in the U.S. while the law is in force. We are clearly seeing evidence that the anti-circumvention

provisions of the DMCA have proven to have a chilling effect on U.S. scientific and research enterprise.

As Congress considers legislation with respect to the use of copyrighted works on the Internet and in other digital and electronic contexts, we urge you to recognize the distinction between circumvention for the purpose of obtaining unauthorized access to a work and circumvention for the purpose of making a non-infringing use of a work. In addition, we hope you would agree that absent some clear criminal intent, technologists should not be penalized for conducting research that is crucial to developing and testing copyright protection systems, security software, and better software engineering tools.

Comprised of computing professionals from academia, industry, and government, the U.S. Public Policy Committee of the Association for Computing Machinery is pleased to offer our technical expertise to assist policy makers in the development of computing and information technology policy. Please contact Jeff Grove, Director of the ACM Public Policy Office at (202) 659-9711, if you have any questions or if we can be of assistance to your efforts.

Sincerely,

Barbara Simons, Ph.D.
Eugene H. Spafford, Ph.D.

Co-Chairs
U.S. ACM Public Policy Committee (USACM)
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