

# Whats all this then?..

**DMCA** is the digital management copyright act. It has been imported from the USA as part of the latest Free Trade agreement. It is not a law about making things free and easy to trade - quite the opposite. It sets the scene for primary brands to control markets and reduces the rights of developers and owners of all kinds of software and hardware. It is combined with DRM(digital rights management) technologies to lock down software and hardware so that only their publishers have the right to interact with them. Interaction by anyone else could be called circumvention by the publisher and described as an illegal act. Here are some suggestions about how Australia will be impacted if the law isn't revised or withdrawn:

## Books

- **I can read a story aloud to my child?**

Yes with a paper book. Currently not legal with some e-books.

DRM act may leave it up to the publisher to choose if you have this right.

Copy: No text selections can be copied from the book to the clipboard

Print: No printing is permitted of this book

Lend: This book cannot be lent or given to someone else

Give: This book cannot be given to someone else

Read Aloud: This book cannot be read aloud

From cover of recent ebook edition of Carroll, Alice in Wonderland

See Brendan Scott's document:

<http://www.linux.org.au/projects/forums/talks/200506-BScott-anti-circ.sxi>

- **I can lend a book to a friend?**

- Paper book – Yes, Digital book - Unclear. Currently illegal for some e-books.

- **I can sell a book to a second hand shop.**

- Paper book – Yes, Digital book - Unclear. Currently illegal for some e-books.

- **I can read a book I buy**

- Paper book - Yes.
- Digital book - Unclear. DRM act aims to provide a framework for publishers and manufacturers to determine what you may do with any of their products after you have purchased them. Licenses are reducing the permissions which consumers have to pay to play, or pay to use. The Australian Government is not balancing the development of the DRM act with development of fundamental sets of rights which the consumer can count on.

# Creative folk

- **I am a musician and composer. I created a work and licensed it. It was distributed on a website. I can now publish it as a CD.**

**Unclear:**

*"The United Nations' World Intellectual Property Organization has called a last-minute meeting on June 21 in Barcelona, out of the normal diplomatic venues to try to ram through the Broadcasting Treaty. This treaty gives broadcasters (not creators or copyright holders) the right to tie up the use of audiovisual material for 50 years after broadcasting it, even if the programs are in the public domain, Creative Commons licensed, or not copyrightable."* Doctorow: <http://boingboing.net/http://www.eff.org/deeplinks/archives/004739.php>

- **I wrote a digital book which a publisher once hosted.**

**I can save this to an archive or website for other folk to see?**

Unclear. Copyright for the author of a book or artwork is far weaker than that for the publisher or distributor. The DRM recommendations are written on behalf of large copyright holders. Authors, artists, scientists and musicians are not effectively protected from exploitation and disenfranchisement by publishing interests:

Doctorow: *"We have very few exclusive rights that accrue to people on the basis of an investment, as opposed to on the basis of creativity. One of them is the investment in medical research. If you do original medical research you do get a monopoly over that research even though it is largely factual. But that monopoly lasts for six months. So what we are seeing is that the process of electromagnetically modulating creative common license video gives you more of a stake in it than conducting original medical research does when you've conducted original medical research, not just more but a hundred times more of a stake."*

<http://www.redhat.com/magazine/016feb06/features/doctorow/interview.html>

- **I have developed a new way to mix music sounds from different source sound tracks. Eric de Castro Lopo did:**

*"October 27th, 2002. Although I have maintained vsound for nearly three years, I can no longer do so, nor can I continue to make it available from this web site. I live in Australia which has a law (Digital Agenda Bill 2000) which is similar to the DCMA in the US in that it makes the distribution of a devices for circumventing copyright protection illegal. I have neither the time, money or inclination to make myself a possible target for such legal action by companies with endless legal and financial resources. However, vsound is probably available from other web sites. If you want a copy, you should search the web. Do not email me as I cannot and will not provide you with a copy."*

This was an open source project and so the technology is not lost, just lost to Australia. If it was a proprietary project the same issue could result in loss of the know-how altogether. As DMCA laws are forced through in other nations the places where new technologies can be safely developed is reduced. Wouldn't it be better if Australia could say it was one of those Clever Countries. A place where the ability to innovate is valued.

# Entertainment

- **I can rewind a movie on my VCR?**

Has not been legal since the 1970's.

You may play a video'd TV program once legally.

<http://blogs.smh.com.au/mashup/archives//004579.html>

- New changes to these laws make it legal to rewind but illegal to keep the copy.

# Using Computers

- **I can put a new video card in my computer?**

Unclear. If the DRM act allows each software and hardware manufacturer to specify which cards and drivers are legal to use with their products then this could be a problem. It is also unclear if the software or hardware vendor could swap the warranty void if removed for a license void if removed sticker, ie against the law to remove.

- **I can put a new printer cartridge in my printer?**

Unclear. Any device which has a call response interaction can be included under DRM. Developing, selling or using a generic brand or alternative brand of printer cartridge could be blocked using DRM. Printer companies have already sued people for using generic printer cartridges and are threatening people who refill their cartridges. It is possible the printer could be sold with a license that requires a new printer to be purchased instead of a new cartridge. If printing companies use RFID tags in paper they could actually make it a criminal act to use plain paper. Circumvention of the relationship between the paper and the printer could be made criminal, the scope of your rights would be up to the US companies.

- **I can buy the software I want and use it on my computer?**

Unclear.

- **I can choose to install a new operating system on my computer?**

Unclear. Depending on how the DRM act is drafted hardware and software companies could require that their products must only be used together.

- **I can keep my old operating system on my computer?**

No. For over a year, Microsoft has planted a program on every modern Windows-powered PC that reported home every day. They are now using their new WGA(Windows Genuine Advantage) version to lock people into compulsory upgrades.

Dave Farber had the following response from a Microsoft representative:

He told me that **"in the fall, having the latest WGA will become mandatory and if its not installed, Windows will give a 30 day warning and when the 30 days is up and WGA isn't installed, Windows will stop working, so you might as well install WGA now."** *[emphasis added]*

<http://iplist.blogspot.com/2006/06/ip-interesting-interaction-with.html>

See also 'Ed Bott at ZDNet:

'Is Microsoft about to release a Windows "kill switch"?'

<http://blogs.zdnet.com/Bott/?p=84>

- **I can use software I buy with my existing software and operating system**

Unclear. The DRM act can use circumvention to allow publishers and manufacturers to determine what may be developed, installed and used on their products.

If this is passed then the manufacturer of your computer, or publisher of the operating system, or the purveyor of any other application on the computer, which may interact with your software, could deem it illegal. They could also change their licenses over time. It could take an exhaustive search of the licenses of each aspect of your computer to find out if a specific program is approved. Large publishers could issue licenses to specific developers to allow them to produce applications which comply. Australian software developers are likely to be operating in small markets which could easily be excluded and disadvantaged by this kind of licensing.

# Working with computers

- **I can recycle old computers and make refurbished computers, new artworks and gadgets?**

Unclear. Re-using equipment for new purposes is a common practice.

Recycling is usually seen as an environmentally useful practice.

Depending on how the DRM is drafted, you could need to get permission from any manufacturer or software publisher involved in each of the components you are working with, perhaps each chip, each driver.

- **I can write a game or other software to be used on my computer?**

Unclear. If the DRM permits copyright holders to determine how their products may be interacted with, then it is possible that developers would have to subscribe to a membership to be allowed to develop at all.

- **I can write a game or other software to be played on my game console?**

Unlikely. Console games developers already pay large fees to gain access to developer kits and permission to develop for these platforms.

- **I can network two computers?**

Unclear. Do the computers run different operating systems?

Do you need to use a specific kind of networking protocol to run the service that you want? VOIP or wireless? Protocols and networking standards could easily become outlawed by copyright led control measures.

# Privacy

- **I have the right to refuse spam?**

- Postal mail - you can put a sticker on your letter box.
- Telephone - you can advise a caller that you do not accept commercial calls and to ask them to remove you from their call list.
- Email - you can delete them, some install viruses on some computers.
- **DVD - You must watch them and may not forward them or remove them.**

- **I have the right to choose what information is collected from me and my computer?**

- Unclear. You may not have the right even to find out if something is collecting and forwarding your information as unpacking a suspected device or program could be considered circumvention.

- **I have a private password?**

For over a year, Microsoft has planted a program on every modern Windows-powered PC that reported home every day. Noone was told that this was being done. Noone has been told what information has been collected. A similar spyware application installed on computers by Sony audio CD's caused thousands of people's computers to be compromised. With the new DRM laws software publishers can make it illegal for people to unpack these things and see what they do.

# Industry

- **I am farming with a native seed species or a new kind of fertiliser. I can customise my seeder to work with different components for planting this new seed?**
  - Non computerised seeder – Yes.
  - Computerised seeder or component involved. Unclear.
  - Depends on how the DRM is drafted.
- **My car's computerised ignition is broken. I can do a roadside fix to get back on the road?**

Unclear. If the DRM act is not tied directly to copyright infringement then any workaround could be considered illegal. Even if you're stuck on the Birdsville Track.
- **I can be sure that my information is accurate and that we are safe?**

DRM provides the purveyor of software the right to 'black box' systems. This leaves the owners of these systems with reduced ability to be adaptable, innovative, accurate, safe. Consider the following situations:

  - air traffic control
  - monitoring and managing power station loads and stresses
  - cryptography
  - risk assessment applications
  - flow control systems
- **Choice and integration with System Control and Data Acquisition systems?**

Many systems are more than just a single application. They can be pervasive and have impact throughout a large business or organisation. DRM legislation is being drafted which could give the software purveyor the right to restrict you to the software they approve for use on the system and to ban you from circumventing their software to see if alternatives can be integrated. Much of our local media, manufacture and social services infrastructure could be impacted by this.
- **I can choose to use non DRM software.**

Yes. Currently. Open source software is an example of the kind of shared copyright which can enable consumers to choose what they would like to install use and share with others. It is important that the DRM act be implemented in a way which makes it clear that open source development and use is a legal choice.

The Digital Video Broadcasting Project (DVB) is a standards-specifying body that creates television and video specifications in Europe, Australia, and much of Asia. Consumers, who have not been consulted, have much to fear in the digital television future that is being crafted right now behind the closed doors of DVB.
- **Patents can be shared?**

Yes. The Patents Commons, provides one way for individuals and organisations to ensure that their patents are available for community use, encouraging and facilitating further invention. <http://www.patentcommons.org/>

# Internationally:

"Europe's Broadcast Flag

**The Digital Video Broadcasting' Project Content Protection and Copy Management: a stealth attack on consumer rights and competition.**

*Content Protection Copy Management (CPCM) is a digital television use-restriction specification that is under negotiation at the DVB. DVB specifies digital TV (DTV) standards for use in Europe, Australia, and parts of Asia and Latin America. The DVB CPCM specification is intended to form the basis of a regulatory mandate by the Hollywood companies that are its principal instigators.*

*This is a restrictions regime that goes well beyond the scope of the failed US "Broadcast Flag." The Broadcast Flag required that programmes with the flag present be handled only by recording and output technologies that have received the blessing of a federal regulator. This "European Broadcast Flag" not only imposes equivalent restrictions, it also mandates that devices be capable of responding to even more complex flags that restrict use on a programme-by-programme basis, so that with each show, a different set of restrictions would come into play.*

*This system requires tight controls over analogue outputs. These outputs are very useful in current digital devices -- they ensure compatibility with existing consumer equipment and enable innovative products. Without unrestricted analogue outputs, sophisticated personal video recorders could not exist without special arrangement or permission from copyright holders or broadcasters.*

*CPCM allows rightsholders to specify restriction of playback to a single "household," granting copyright holders a veto over which households are "legitimate" and which ones are "illegitimate."*

*No account of the exceptions to copyright that safeguard education, criticism, free speech, and fair dealing is taken in CPCM. An educator who may have a legal right to show a clip to her class has no means of taking restricted content out of a CPCM system and into a classroom. A volunteer adding assistive information for disabled people to a programme has no means of extracting the programme into an environment where this activity can take place."*

Cory Doctorow,

European Affairs Coordinator,

Electronic Frontier Foundation

[cory@eff.org](mailto:cory@eff.org)

[http://www.eff.org/IP/DVB/dvb\\_critique.php](http://www.eff.org/IP/DVB/dvb_critique.php)

# Democracy

- Software is very often used in culturally sensitive contexts and to provide trusted results. Without the right to understand how the software works, or how it may be modified to provide more reliable service, we can not be sure of our information.
- **Black boxed digital voting systems?**  
Digital voting systems have caused controversy in the US where it is alleged that the software administrators added in votes, according to how many they thought might be missing, when the software crashed. Australia is currently considering adopting digital voting systems and concurrently considering accepting laws which do not permit them to investigate the accuracy of the software or to improve or repair it if it is faulty.
- **Increasingly software simulation is being used to represent predicted outcomes for the impact of a development or impact of disaster. I can ask to see how the simulation was constructed to see whether it is accurate?**  
In a DRM world a software publisher could say that the client, let alone you as a public person, may not circumvent or unpack their software because it conflicts with their copyright. This could block access to effective community consultation as well as making it impossible to be certain a simulation is accurate.
- **I can find a list of my Australian Digital Civil Rights?**  
If you do please let us know.
- **It is possible to know if my action will be legal?**  
Prior to the decision on the DRM act the legality of our actions are not possible to determine. Following the decision, if the rights are determined by copyright holders, there can be no overarching clarity about what is generally legal and illegal. The basic rights of Australians have not been a primary consideration in these processes. These laws are coming to us as the result of lobbying from US businesses in a trade agreement.

“The reality is that we do not spend a lot of time thinking about legal issues when we negotiate agreements in the GATT... [T]he concerns that we have are with the commercial results of what a negotiated agreement is, rather than with the legal miceties of it.”(Emory Simon, then Director for Intellectual Property at the Office of the United States Trade Representative.) Drahos, Braithwaite, Information Feudalism. 2002

Our rights were addressed by inviting people to submit comments on specific kinds of use as exceptions to a default DRM law. This should be the other way around. Our access rights should be defined and consistent with exceptions for nefarious circumvention to defraud being an exception to normal use.

- **I can change this?**  
If this is a democracy then Australian interests can define our rights. The laws should be developed on our behalf. Perhaps our lawmakers have become too willing to accept international recommendations uncritically. Time for Australian consumers, developers, inventors, artists, musicians, educational institutions and businesses to identify our Digital Access Rights and bring those to any agreement which impacts on our right to innovate, communicate and trade. Please sign the petition and talk about these issues with friends family and business partners. Make your digital rights an issue for your government representative.  
<http://www.linux.org.au/law/>

- **What should we ask for?**

Providing right of way to manufacturers and publishers at the expense of all other members of our digital community establishes a feudal system of control over our rights to access and interact with digital information.

Free nations are built on a precept that freedom comes from sharing rights jointly with others. Not on excluding the rights of the many in the interests of the few. Digital media is a chattel, a commodity. Digital media should be something we can own and use flexibly, not something which then owns our future choices.

Digital products should not cause anomalies in our civil rights.

These tools and the content on them increasingly are becoming our means of communication with each other. Distortions of our rights on these products have dramatic implications for our cultural, community and business freedoms.

As an interesting contrast:

**From the Universal Declaration of Human Rights:**

Article 17.

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 19.

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20.

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 21.

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 27.

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28.

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Quiz drafted by Janet Hawtin. Thanks to all who've helped.  
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