

# EVIDENCE FOR APIG ENQUIRY INTO “DRM” TECHNOLOGY

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## **Summary**

The Association for Free Software is a membership organisation, and speaks about issues which affect Free Software and the community around it (sometimes called “Open Source” or “FLOSS”). Free Software made available such that anyone can run, modify or share the software.

“Digital Rights Management” (or, “DRM”) technology presents a number of opportunities for content producers, as the APIG has rightly pointed out. However, there are significant problems with this technology, and it is our position that the drawbacks vastly outweigh any benefits, and that many problems with DRM are essentially unsolvable.

Although we are writing specifically about how DRM disrespects a user's freedoms, and how it is usually antagonistic to Free Software, we believe many, if not most, of the arguments presented extend beyond this community.

## ***Distortion of traditional trade-offs***

DRM technology does not have the capability of representing properly a user's rights to any given work. In the first instance, the DRM technology must actually be operational for it to work, and there are many practical instances where it does not or cannot, and thus practically removes a user's rights to a work. Examples where DRM may be inoperative/inoperable:

- the DRM software is embedded into the work, but was written for a different operating system (OS) / older OS / hardware platform, and cannot be updated;
- the DRM'd media requires software not available on the given OS / hardware platform;
- the DRM'd media requires certain compatible hardware to be present;

As an example of inoperable DRM, it is impossible to play a DVD on a Free Software system, even though all components have been purchased lawfully. The licensor of the DRM system on DVDs will not make it available to be implemented in Free Software, and there is nothing that others can do about it.

DRM cannot help but distort: with DRM, there is no trade-off. In the same way that opening a door is morally acceptable (whereas breaking and entering is not), accessing content is acceptable whereas copyright infringement is not. The use of legislative means to protect DRM is as broad a stroke as legislating against crowbars to prevent burglary.

## ***New types of content licence***

By and large, free software licences (which tend to be used only for software, though content is often licensed under them also) do not enforce rights that the author has – they generally give them up in perpetuity. Our worry would be further change - given the above, it could do nothing except possibly harm the licence structures that are already in place.

## ***How consumers should be protected***

APIG asks specifically about “when DRM mechanisms are discontinued”, we believe this is too narrow a question: consumers need to be protected when DRM mechanisms fail to function. DRM is essentially mistrustful of the user, and it is this hostility which is at the heart of all problems with DRM. Legislative protection has been given to DRM systems; none has been given to the end user.

## ***Whether DRM systems can have unintended consequences on computer functionality***

As mentioned, the user is effectively running software on their machine which doesn't trust them. This is not an acceptable situation for users of free software, and we are beginning to see examples of the harm that can occur when a user no longer has full control over their computer.

Recently, Sony BMG installed a DRM system on their CDs which attempted to act invisibly when played on a user's PC<sup>1</sup>. Technically, it would be illegal to bypass this system on your PC yourself, but removing the DRM system using Sony's method results in severe security issues which leave your PC wide open to attack<sup>2</sup> over the internet. In this situation, a user cannot win – they no longer have full control over their PC, and legal measures prevent others from disseminating information on bypassing the system, even though removal of the system is essential to maintain system security. This type of situation could be neither justified nor tolerated.

## ***Other issues***

### **General concerns on the anti-competitive use of DRM technology**

A common refrain from DRM designers is that it should “continue to remain voluntary and market-driven”. There does not appear to be significant evidence that use of DRM prevents copyright infringement on a commercial scale; on the other hand, there is much evidence of it being used for other goals. An example of this is the games console market: although it would be perfectly possible to run Free Software on many games consoles (for example, the XBOX<sup>3</sup>), manufacturers of that hardware discourage that by using DRM systems to prevent other people's software from running. This type of arrangement is spreading to consumer PC equipment also (e.g., Intel's VIIV<sup>4</sup> consumer PC).

The effect of DRM in this arena is that it gives the manufacturer of hardware devices complete control of the market for content and software on those devices. They place themselves in a monopoly position; able to say what products can and cannot be run, and able to dictate price to those they allow into their world. There is no way around this legally protected monopoly.

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1 See [http://www.boingboing.net/2005/11/14/sony\\_anticustomer\\_te.html](http://www.boingboing.net/2005/11/14/sony_anticustomer_te.html) for a round-up

2 Security researcher Ed Felten has presented details on exactly how serious these issues are; see [http://www.boingboing.net/2005/11/15/sonys\\_spyware\\_remove.html](http://www.boingboing.net/2005/11/15/sonys_spyware_remove.html)

3 [http://www.xbox-linux.org/wiki/Main\\_Page](http://www.xbox-linux.org/wiki/Main_Page)

4 <http://www.intel.com/personal/desktop/viiv/>

## ***The role of the UK Parliament in influencing the global agenda for this type of technical issue***

DRM is becoming more and more commonplace, and the practical issues users encounter are growing. This technology needs to be evaluated, urgently and transparently: it presents problems without showing the supposed benefits of preventing commercial-scale copyright infringement. Without such evidence, it is difficult to justify the present position of legislation in this matter. For example, DVD rental for limited periods of a few days to a few weeks is already commonplace, without technical measures in place to ensure the user doesn't have the film a second longer than they ought: would using DRM to support such time-limited service make a measurable difference?

The UK Parliament should re-evaluate whether or not protecting DRM technology is really in the interests of both producers and consumers, and encourage other countries to take a similarly critical re-assessment, given the other side-effects of that protection. We welcome the Gowers review into such matters, and hope that the opportunity to re-assess our current legislation is taken with both hands.

### ***Future Legislation***

It cannot be said that Free Software developers have no interest in the upholding of existing laws, such as copyright. The Free Software community knows “commercial-scale piracy” all too well, and has struggled with **persistant** infringement<sup>5</sup> by well-known manufacturers and retailers, involving professionally manufactured hardware and software such as laptops, broadband equipment, DVD players and, ironically, DRM systems<sup>6</sup>.

Yet, the Free Software community will not embrace DRM technology to “protect” the rights it holds, nor do the businesses who profit from Free Software development, and nor do they support future legislative proposals such as “IPRED2”, which seeks to criminalise commercial infringement. Use of DRM would do little to prevent the misappropriation of Free Software into proprietary products, and current copyright (and other legislation) is sufficient to stop such infringement and compensate authors.

Before any new legislation be considered, we urge that current legislation be evaluated, and if it is found to have not performed well, that we think critically before expanding it. We would also point out that users do not receive protection from hostile DRM systems currently, and serious thought should be given to that in the light of recent activities by music producers. Lastly, we would also urge legislators to think carefully about why users should be prevented from accessing content they have rights to access, simply because they use different software to the manufacturer's preferred system.

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5 One website tracking such copying is <http://gpl-violations.org/>, but it does not cover all Free Software

6 Sony BMG's latest “XCP” attempt to DRM their audio CDs actually contains Free Software, and infringes on the copyrights of a number of authors: [http://www.theregister.co.uk/2005/11/18/sony\\_copyright\\_infringement/](http://www.theregister.co.uk/2005/11/18/sony_copyright_infringement/)