

Digital Rights Management

Submission to All Party Internet Group by UKUUG

DRM and Copyright

The issue of Digital Rights Management (“DRM”) is intertwined with and has to be considered in conjunction with proposed EU 2nd Intellectual Property directive (“The Directive”).

We believe that the objectives of The Directive are not particularly well set out and it is necessary to draw back and consider what (if anything) is to be achieved. Neither is it properly set out what DRM is intended to achieve and what form it should take.

Software versus music and video

We believe that music and video on the one hand, and software on the other offer different scenarios in terms of how copyright could or should be enforced.

- Software is typically copied once from a distribution medium and “installed” whereas music and video is usually played each time from the media.
- Software has to be copied exactly to work at all whereas music and video can often withstand format conversions and copying with considerable loss of quality.
- Software can very easily include its own copy protection whereas music and video are supplied in pre-existing formats devised before writing such formats became possible to the public.
- Software is increasingly supplied as “Open Source” under which free copying is encouraged.

The last two points are most important to us.

It is very easy for a software manufacturer to implement some “licence code” scheme in the software itself whereby a user cannot use the software, or can only use a subset of its facilities until a supplied code, only provided once payment has been received, has been entered or obtained via the Internet.

This is so easy to implement that further support either in law or via some DRM hardware system is in our opinion quite unnecessary.

Further it is possible to run Open Source and Closed Source software together, for example a Closed Source application can be run on Linux or an Open Source application can be run on Microsoft Windows. Many of the DRM schemes being suggested would require Closed Source support for additional hardware both within the operating system and some applications. This would probably rule out use of Open Source for both operating system and applications¹.

¹ It is possible, for example to have an Open Source application link to a closed-source library and similar for the operating system but this would be awkward for many uses and

We think that the risk to consumer choice in preventing selection of Open Source software is too great to consider mandatory adoption of DRM techniques in all new computers.

We believe that, for example the December 2005 White Paper “Expanding the frontiers of our digital future” by the BSA, which totally ignores Open Source, should be disregarded. If they want to prevent “piracy”, the means to do so are within the software itself.

Music and video

Historically it has not been easy, other than for large criminal concerns, to copy vinyl records or, when they first came out, CDs and DVDs. However it is now possible to buy a DVD recorder to fit in a PC (if it doesn't have one already) for under £100.

The recording formats (apart from the Contents Scrambling System or “CSS” on DVDs) were developed historically without consideration of copy protection which is why music and video companies are now concerned about copy protection.

We have no sympathy for large criminal concerns which make “pirate” copies of music on an industrial scale and we fully support efforts to prevent and prosecute their activities.

Where we do depart from the music and video industry, however, is what we consider to be reasonable “own use” of material but which they consider to be unauthorised copying. We have in mind scenarios such as the following, all in the circumstances where the original legal purchaser is the exclusive user.

- Making backup copies of legally-purchased CDs in case of loss or damage.
- Converting the contents of a legally-purchased CD for use in a mobile MP3 player.
- Compiling a CD consisting of favourite tracks from various legally-purchased CDs for use in a car CD player without fumbling with multiple CDs whilst driving.
- Playing a legally-purchased DVD video on a computer rather than a DVD player².

Most consumers believe (we think reasonably) that the musicians have received their due royalties, the music or video companies their due profit and the government their due tax at the time of the original legal purchase.

We believe that the statistics offered by the music and video companies of the extent of “piracy” are inflated by their view that the type of activities listed above should be included.

We would recommend that any implementation of The Directive should make appropriate “own use” exemptions covering types of activity such as the above. There appears to be a “presumption of guilt” by the manufacturers against their customers.

developers at present.

2 We have in mind here the case of “DVD Jon” in Norway who was prosecuted – and acquitted for doing precisely that.

We also believe that manufacturers abuse the facilities that they have, for example arranging with DVD player manufacturers that viewers of DVDs cannot “fast forward” over advertising material.

DRM for music and video

From the point of view of a computer, a music CD or video DVD consists of just “lumps of data”. Some intervention would have to take place for a computer to be prevented from copying these items. This is where some DRM technique might be deployed.

It is not possible to do this without affecting other quite legitimate activities for which the computer might be used – and this would have a knock-on effect for Open Source software as discussed above.

All attempts so far at DRM have had undesirable effects for example:

- Levies on blank media such as CD-Rs penalise non-infringing uses.
- The efforts in the early 1990s to control use of DAT recorders prevented their widespread use.
- The recent ill-fated Sony “Rootkit” (or virus variant) on some CDs damaged PC software³.
- The region code system in DVD CSS inhibits the use of legally-purchased DVDs from being played on a legal player in another country.

We have little reason to believe that any new DRM system will be better.

An significantly worse problem would be that whilst the music and video companies turn a “blind eye” to technical violations by blind and disabled users, a mechanical DRM system will not – and any loopholes left for their benefit may be exploited.

Responses to consultation questions

Whether DRM distorts traditional tradeoffs in copyright law

We believe that it does as it imposes restrictions on legitimate activities unconnected with unauthorised copying.

Further, the DRM persists when the copyright has actually expired, thereby causing an indefinite extension of the copyright in excess of the period set down by law.

Whether new types of content sharing license (such as Creative Commons or Copyleft) need legislation changes to be effective

There have been few challenges in court⁴ to this kind of license arrangement to date and it is hard to say.

We think strongly that any DRM system must not prevent this kind of

³ See for example <http://news.bbc.co.uk/1/hi/technology/4406178.stm>

⁴ An exception might be the multiple lawsuits brought by (former Linux distributor) SCO against IBM, Novell and others in which the GPL is partly at issue.

licensing.

How copyright deposit libraries should deal with DRM issues

We believe that copyright deposit libraries should in all cases receive DRM-free versions of the items deposited to ensure that no material becomes inaccessible at some future date due to the use of a long-obsolete DRM system.

How consumers should be protected when DRM systems are discontinued

We believe that consumers would be best protected if DRM is not implemented in the first place. However consumers should be entitled to a free of charge replacement of any item protected by an obsolete DRM system. The item should be free of any DRM system once the copyright has expired.

There are, however, complications which arise if the supplier goes out of business or unilaterally revokes legitimate access to materials purchased in good faith. It is hard to see how these can be managed.

To what extent DRM systems should be forced to make exceptions for the partially sighted and people with other disabilities

As described above, DRM systems will not turn a “blind eye” to such technical violations as happens at the moment without introducing loopholes.

What legal protections DRM systems should have from those who wish to circumvent them

We strongly believe in the permission for “own use” applications as described above and do not believe any penalty should be imposed on circumvention for this.

Whether DRM systems can have unintended consequences on computer functionality

We believe that this is our fundamental objection to DRM. All previous attempts to implement DRM or equivalents have had unintended consequences and there is every reason to believe that the current proposals would.

The most obvious consequence is the restriction of choice for the consumer, providing yet further monopoly power (for example) to Microsoft, who already profit from collecting money from purchasers of PCs which ultimately do not run their software.