USACM Comments on the
Digital Millennium Copyright Act (DMCA)

Background

The Digital Millennium Copyright Act (DMCA) was signed into law as P.L. 105-304 on October 28, 1998, after the U.S. Congress passed H.R. 2281. The Act amends and updates the Copyright Act (title 17 U.S.C.) with respect to use of copyrighted works on the Internet and in other digital, electronic contexts. While its supporters argue the law is necessary to protect intellectual property rights in today's digital era, ACM and other leading scientific and engineering societies believe the enactment of the DMCA has proven to have substantial negative impacts on the conduct of basic research in the U.S., particularly in cryptography and other computer security areas. Of specific concern to ACM is the "anticircumvention provisions" of the DMCA contained in Section 1201 (title 17 U.S.C.).

USACM Concerns on the DMCA

In communications with the public, policymakers, and the Courts, USACM has consistently pointed-out that the anticircumvention provisions of the DMCA impede the progress of research in cryptography and other computer security areas by criminalizing multi-use technologies rather than penalizing infringing behavior. Since enactment of the DMCA, some scientists have found it necessary to consult attorneys to determine if their previously legitimate research might be in violation of the Act. In some instances, the threat of legal action under the DMCA has deterred scientists from publishing scholarly work or even publicly discussing their research. Foreign scientists and international members of our association have indicated they will not attend conferences in the U.S. while the DMCA is in force. These examples illustrate how the anticircumvention provisions of the DMCA have produced a chilling effect on U.S. scientific and research enterprise.

During the consideration of the DMCA by Congress, the rulemaking process, and in judicial interpretations of the Act, USACM and others in the computing community recommend that the anticircumvention provisions of the legislation be revised to restrict only circumvention directly involved in infringement. We further highlight 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;

* the majority of research in computer security and encryption fall outside of the exemptions to the anticircumvention provisions, including the research and testing of information processing systems and the development of programs that impede the spread of viruses and other kinds of malicious software;

* permitting reverse engineering for the sole purpose of interoperability may criminalize development of software engineering tools and technology with other uses; and,

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

USACM Recommends a More Balanced Approach

During the 108th Congress, H.R. 107, the Digital Media Consumers' Rights Act, was introduced to address many of our concerns with the DMCA and restore a balance in copyright law by making a 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. For instance, consumers and researchers would be permitted to access hardware and software products that enable non-infringing uses of copy-protected works. Of particular interest to the computing community, H.R. 107 ensures that technologists would not be penalized for conducting research that is crucial to developing and testing copyright protection systems, security software, and better software engineering tools.

For more information, please contact the ACM Office of Public Policy at (202)659-9711.