



USACM

The Public Policy Committee of ACM

USACM Policy Recommendations on Digital Rights Management February 2006

BACKGROUND:

New technologies have remade the consumer entertainment landscape, allowing creative content – such as movies, television, and radio programming – to be delivered in digital form. Because exact copies of digital content can be widely and quickly distributed, some content distributors are employing technical protection systems to manage consumer uses of copyrighted content, often characterized as “digital rights management (DRM)” technology. DRM systems are intended to enable distributors to manage consumer uses of content. In theory, this may prevent the making and distribution of infringing copies of digital works. However, use of these technologies has created controversy, especially as regards issues of “fair use” and public interest. In some cases, DRM technologies have been found to undermine consumers’ rights, infringe customer privacy, and damage the security of consumers’ computers. One notable example was the software distributed with compact discs in 2005 by Sony BMG. Sony subsequently withdrew the product, which had created security and privacy vulnerabilities for consumers' computers, because of resulting public criticism and legal action.

The marketplace should determine the success or failure of DRM technologies but, increasingly, content distributors are turning to legislatures or the courts to erect new legal mandates to replace long-standing copyright regimes. DRM systems should be mechanisms for reinforcing existing legal constraints on behavior, not mechanisms for creating new legal constraints. Striking a balance among consumers’ rights, public interest, and protection of valid copyright interests is no simple task for technologists or policymakers. For this reason, USACM has developed the following recommendations on this important issue.

RECOMMENDATIONS:

Competition: Public policy should enable a variety of DRM approaches and systems to emerge, should allow and facilitate competition among them, and should encourage interoperability among them. No proprietary DRM technology should be mandated for use in any medium.

Copyright Balance: Because lawful use (including fair use) of copyrighted works is in the public's best interest, a person wishing to make lawful use of copyrighted material should not be prevented from doing so. As such, DRM systems should be mechanisms for reinforcing existing legal constraints on behavior (arising from copyright law or by reasonable contract), not as mechanisms for creating new legal constraints. Appropriate technical and/or legal safeguards should be in place to preserve lawful uses in cases where DRM systems cannot distinguish lawful uses from infringing uses.

Consumer Protection: DRM should not be used to interfere with the rights of consumers. Neither should DRM technologies interfere with any technology or use of consumer systems that are unrelated to the copyrighted items being managed. Policymakers should actively monitor actual use of DRM and amend policies as necessary to protect these rights and interests.

Privacy and Consent: Public policy should ensure that DRM systems may collect, store, and redistribute private information about users only to the extent required for their proper operation, that they follow fair information practices, and that they are subject to informed consent by users.

Research and Public Discourse: DRM systems and policies should not interfere with legitimate research, with discourse about research results, or with other matters of public concern. Laws and regulations concerning DRM should contain explicit provisions to protect this principle.

Targeted Policies: Public policies meant to reinforce copyright should be limited to applications where copyright interests are actually at stake. Laws and regulations concerning DRM should have limited scope, applying only where there is a realistic risk of copyright infringement.

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