

DMCA

Copyright Protection and Management Systems 17 USC 1201 et seq.

§ 1201. Circumvention of copyright protection systems

§ 1202. Integrity of copyright management information

§ 1203. Civil remedies

§ 1204. Criminal offenses and penalties

§ 1205. Savings clause

DMCA
Anticircumvention Provisions
17 USC 1201

- Prohibitions
- Definitions
- Exceptions
- Exemptions
- Unsettled Areas of Law

DMCA
Anticircumvention Provisions
17 USC 1201 et seq.

- Acts of Circumvention
- Trafficking in Circumvention Tools

Acts of Circumvention

No person shall circumvent a technological measure that effectively controls access to a work protected by copyright. §1201(a)(1)(A)

[Does not prohibit copy control circumvention]

Ban on Circumvention Tools

No person shall manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component, or part thereof, for circumvention of TPM that

- effectively controls access to a work protected by copyright. §1201(a)(2)(A) OR
- effectively protects the rights of a copyright holder. §1201(b)(1)

What Are Technological Protection Measures?

Access control: in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work. §1201(A)(3)(b)

Copy control: in the ordinary course of its operation, prevents, restricts, or otherwise limits the exercise of a right of a copyright owner under this title. §1201 (b)(2)(B)

Examples of TPMs

- DVD encryption
- Bot scanners
- Chip/software authentication handshakes
- VPN encryption/password

What Are Circumvention Tools?

- (A) primarily designed or produced for the purpose of circumventing;
- (B) has only limited commercially significant purpose or use other than to circumvent; or
- (C) is marketed by that person or another acting in concert with that person with that person's knowledge for use in circumventing protection.

DMCA Statutory Exceptions

- Nonprofit Libraries, Archives, and Educational Institutions
- Law enforcement
- Reverse engineering for interoperability
- Encryption research
- Protection of Personally Identifying Information
- Security testing

DMCA Triennial Rulemaking

Librarian of Congress has power, upon recommendation of the Register of Copyrights, to grant a three year exemption to the DMCA ban on acts of circumvention.

- No power to grant exemptions for tools or services

DMCA
Civil and Criminal Remedies
17 USC 1203, 1204

- Injunction (no prior restraint though!)
- Impounding
- Actual damages & profits
- Statutory damages:
 - 1201: not less than \$200 or more than \$2,500 per
 - 1202: not less than \$2,500 or more than \$25,000 per
- Attorneys' fees
- willfully and for purposes of commercial advantage or private financial gain— up to \$500,000/5 years (2x for subsequent offense)

DMCA
Security Testing Exception
17 USC 1201(j)

Definition -- accessing a computer, computer system, or computer network, solely for the purpose of good faith testing, investigating, or correcting, a security flaw or vulnerability, with the authorization of the owner or operator of such computer, computer system, or computer network

DMCA

Security Testing Exception

17 USC 1201(j)

ACTS: If such act does not constitute infringement under this title or a violation of applicable law other than this section, including CFAA

Factors to be considered shall include—

- (A) whether the information derived from the security testing was used solely to promote the security of the owner or operator of such computer, computer system or computer network, or shared directly with the developer of such computer, computer system, or computer network; and
- (B) whether the information derived from the security testing was used or maintained in a manner that does not facilitate infringement under this title or a violation of applicable law other than this section, including a violation of privacy or breach of security.

TOOLS: it is not a violation ... for a person to develop, produce, distribute or employ technological means for the sole purpose of performing the acts of security testing described in subsection (2), provided such technological means does not otherwise violate section (a)(2).