

# Three Commandments of the Digital Wrapper (and their exceptions)



## “A Technological Measure”

... ‘effectively controls access to a work’ if the measure ... requires the application of information, or a process or a treatment with the **authority** of the copyright owner, to gain access to the work.

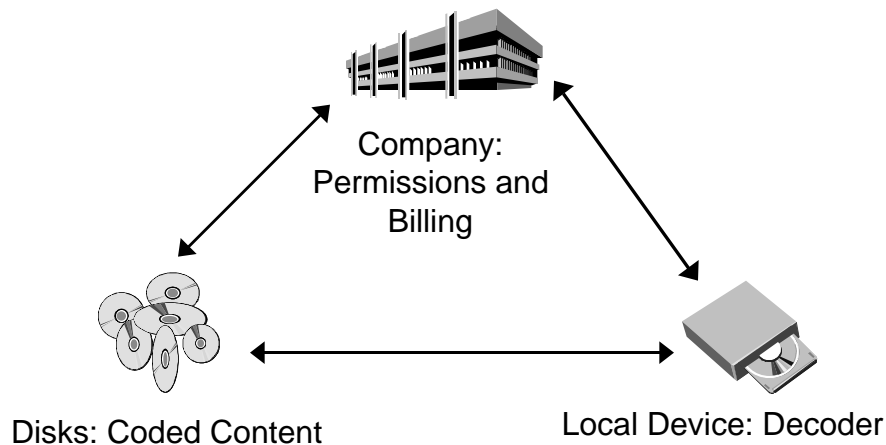
## Technological Measure May Control:

- Who can use resource
- When it can be used
- What the user can do with it
  - Copy
  - Extract
  - Print
  - Archive
  - Loan
  - Use on another system
  - Etc.

## Hardware or Software Measures Could Be:

- Associated with the product
- On your computer
- On provider's computer
- At an intermediary (e.g. and ISP)
- Any combination

## Example of a Control



## “Copyright Management Information”

“... any of the following information conveyed in connection with copies or phonorecords of the work or performances or displays of a work, including in digital form, except that such a term does not include any personally identifying information about a user ...”

Title ...  
Author...  
Copyright owner ...  
Performer ...  
Writer, Director ...  
Terms and conditions ...  
Identifying numbers or links ...  
“Such other information as ...”

## Commandment Number One

- **May not “circumvent” technological measures**  
**(“avoid, bypass, remove, deactivate, or otherwise impair”)**
  - Exception for libraries if deciding to purchase
  - 2 year moratorium on enforcement
  - Study of impact on “Fair Use”

## Commandment Number Two

- **May not [traffic] in technology, product, service, device, device, component, or part thereof, that is ... “primarily designed or produced for the purpose of circumventing ...”**
  - additional qualifications and exemptions for security research, etc.

## Commandment Number Three

- **May not remove or alter CMI, or knowingly distribute material in which CMI has been removed or altered**

- Exception for privacy protection
- Technological exceptions

## Anticircumvention and Fair Use

- **Clearly a contradiction**
  - Certain unauthorized use is legal as fair use
  - Yet, unauthorized circumventing illegal
- **Two-year moratorium**
  - Library of Congress Rule-making

## Moratorium, But!

- Wouldn't be prosecuted now under Anticircumvention section, but,
- No moratorium on ban on technology.
  - Might claim the act of circumventing implies trafficking in technology.
- Other criminal law likely covers unauthorized access to on-line data bases.

## Exception to Anticircumvention

- “Prohibition shall not apply to **users** of particular **classes of works** if such persons are or are likely to be in the succeeding three year period adversely affected in their ability to make non-infringing uses of that particular class of works.”

## Need Formal Process to

- Determine who are affected **users**
- What are the **classes** that should be exempt from anticircumvention

## Rulemaking

- By Library of Congress
  - Assisted by Copyright Office and NTIA (Dept. of Commerce)
- Rulemaking Formal Administrative Procedure
  - Not set by LoC yet
  - Formal Request for Comments
  - Respond to comments other's

## Rulemaking Depends on

- Facts
- Analysis
  - Of Facts
  - Of Law
  - Of Policy
- Advocacy
- Must take account of input

## We must develop answers

- Identify “classes” of works
- Identify users
- Identify current impacts
- Project likely impacts
- Frame reasonable “rules” (advocacy)



## We are undertaking a study

- Data collection

- What are technological controls?
  - » Lots of experiments, little consensus
- What uses do they control and how?
  - » Need illustrative examples

- Analyze how they do or may affect user rights

- Ancillary issues: economic and privacy implications

## We Need Your Help!

- Providing us with data

- Anecdotes and systematic information

- Participating in rulemaking