

July 26, 2001

The Honorable Patricia S. Schroeder
President & CEO
Association of American Publishers
50 F Street, N.W., 4th Floor
Washington, D.C. 20001

Dear Ms. Schroeder:

As you know, the Association for Computing Machinery (ACM) is a member of the Association of American Publishers (AAP). As the Co-Chairs of the U.S. Public Policy Committee of ACM, we are concerned by the APP statement released on July 19, 2001, which hailed the U.S. Department of Justice's recent arrest of a Russian cryptographer for allegedly violating the anti-circumvention provisions of the Digital Millennium Copyright Act (DMCA). We would like for the AAP to be aware that ACM has consistently opposed the anti-circumvention provisions of the DMCA. In our view, the overly-broad provisions impede the progress of research in cryptography and other computer security areas by criminalizing multi-use technologies rather than narrowly penalizing infringing behavior.

ACM has been shifting its publication operations from paper-only to electronic distribution and we understand the importance of reasonable copyright protections. ACM is an educational and scientific computing society comprising computing professionals from all areas of industry, academia, and government. As such, we strongly support the freedom of computer scientists to engage in research, and to exchange ideas and information fundamental to the progress of innovation. The need for free communication and fair-use of information are vital to the processes of education and research.

During consideration of the DMCA by the U.S. Congress and the subsequent rulemaking process, ACM recommended that the anti-circumvention provisions of the legislation be revised to restrict only circumvention directly involved in infringement. We further elucidated 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;
- * exempting encryption research from the anti-circumvention provisions is too limited as the majority of computer security research does not involve encryption;
- * permitting reverse engineering for the sole purpose of interoperability may criminalize development of software engineering tools and technology with other uses; and,

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

Unfortunately, our concerns were not satisfactorily addressed as the DMCA was enacted or as the implementation rules were promulgated. As a result, scientists are now finding themselves in a position where they must consult attorneys to determine if their previously legitimate research might be in violation of the DMCA. In some instances, the threat of legal action under the DMCA has deterred scientists from publishing scholarly work or even publicly discussing their research. Certain foreign scientists and international members of ACM have indicated they will not attend conferences in the U.S. while the law is in force. We are clearly seeing evidence that the anti-circumvention provisions of the DMCA have proven to have a chilling effect on U.S. scientific and research enterprise.

While we recognize that the AAP works to protect the interests of book and journal publishers by advocating strong copyright protection in digital environments, we urge you to recognize the 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. In addition, we would hope you would agree that absent some clear criminal intent, technologists should not be penalized for conducting research that is crucial to developing and testing copyright protection systems, security software, and better software engineering tools.

In light of your recent release indicating support for the anti-circumvention provisions of the DMCA, we respectfully inquire if the AAP shares the concerns that ACM and other professional societies and research leaders have expressed regarding the Act's chilling effect on research and scientific freedom?

We look forward to your reply. Please contact Jeff Grove, Director of the ACM Public Policy Office at (202) 659-9711, if you have any questions or wish to discuss our concerns.

Sincerely,

Barbara Simons, Ph.D.
Eugene H. Spafford, Ph.D
Co-Chairs
U.S. ACM Public Policy Committee
Association for Computing Machinery

About USACM:

USACM is the U.S. Public Policy Committee of the Association for Computing Machinery (ACM). ACM is the leading nonprofit membership organization of computer scientists and information technology professionals dedicated to advancing the art, science, engineering and application of information technology. Since 1947, ACM has been a pioneering force in fostering the open interchange of information and promoting both technical and ethical excellence in computing. Over 70,000 computer scientists and information technology professionals from around the world are members of ACM.