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Chilling effect of the DMCA

In response to the August 19 Perspectives column by Declan McCullagh, "[Debunking DMCA myths](#)":

Declan McCullagh misses the boat at least twice in his column concerning the potential impact on computer science research of the Digital Millennium Copyright Act.

First, the DMCA has two arms: one that prohibits devices that circumvent copy protection, and one that prohibits acts of circumvention. The research conducted by Professor Felten and his colleagues took place prior to the time when the "acts of circumvention" provisions became effective in October 2000. Thus, these provisions did not apply to that research. However, there is little doubt in the legal community that this research, and similar research, would be illegal under the "acts of circumvention" provisions. Declan McCullagh fails to recognize this arm of the DMCA in his column. Second, the chilling effect of the DMCA cannot be described by the probability of conviction alone. One must also consider the magnitude of the exposure if convicted. Because the "acts of circumvention" provisions of the DMCA were not in effect at the time of the Felten research, the probability of an adverse judgment was indeed small. However, a group of highly respected legal consultants told Felten's employer that the cost of an adverse judgment could be truly enormous. The combination of these two factors had a very substantial chilling effect. (It is also the case that two individuals were likely to lose their jobs if the paper was published. This illustrates the human dimension of the chilling effect.)

Other issues, on which we shall not elaborate, include the anti-dissemination provisions of the DMCA and the civil (in addition to criminal) provisions.

It is disruptive to the progress of research when scientists must first consult with attorneys to determine if previously legitimate research might be in violation of the DMCA. We are happy to agree with Declan McCullagh that "The DMCA is...an egregious law...and should be unceremoniously tossed out by the courts."

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