

Digital Copyright Court Cases

News:

Kaplan Issues Ruling in New York DeCSS Case. On August 17, 2000 Judge Lewis Kaplan, of the US District Court for the Southern District of New York, ruled in favor of the Motion Picture Association of America ([MPAA](#)) and issued a permanent injunction against Eric Corley (a.k.a Emmanuel Goldstein) and [2600 Magazine](#). Corley and 2600 are enjoined from linking to websites providing access to DeCSS, a program that allows the decryption of DVDs. This case is the first test of the DMCA, which outlaws reverse engineering, except in a few protected instances. An appeal is planned.

Overview:

The movie industry has filed lawsuits in California, New York, and Connecticut to prevent Internet sites from distributing information about the DVD Content Scrambling System. A federal judge in a district court in New York granted a preliminary injunction January 20 against three defendants who provided the decoding software on their Web sites. A judge in a California state court granted a preliminary injunction the following day against 21 defendants. The contended program, DeCSS, created by a Norwegian programmer, allows users to decode the encryption used on DVDs.

The California case was filed by the [DVD Copy Control Association](#), an industry trade group, after Christmas against 72 Web sites and individuals who had either published information about DeCSS or provided a link to the information from their sites. The judge refused to grant a preliminary injunction in December but then did so in January. The DVD-CCA claims that the defendants are violating their trade secrets by discussing the source code used to bypass the DVD encryption scheme through reverse engineering. The defendants, however, assert that the purpose of the DeCSS is not to engage in illegal duplication of DVDs but rather to allow DVDs to operate on Linux computers. Currently Windows and MacOS systems are able to utilize DVD drives and content, but the Linux operating system does not have the necessary equipment. Challenging the plaintiffs' assertion that the DeCSS would promote the illegal pirating of movies, analysts note that it would take Internet users over a week to download a DVD.

The New York case and its companion case in a Connecticut federal court were filed on Jan. 15 after the California judge initially declined to grant an injunction against the defendants. While the California case is based upon the violation of trade secrets, the New York and Connecticut cases center upon the [Digital Millennium Copyright Act](#), a 1998 law that prohibits the distribution of products that can circumvent copy protection schemes. The [Motion Picture Association of America](#), along with six other movie

studios, are plaintiffs in the New York case. The [Electronic Frontier Foundation](#) is providing legal counsel to defendants both in California and New York.

The motion picture industry also sued Jon Johansen, a sixteen-year-old Norwegian teenager, for illegally bypassing the DVD encryption scheme and then posting the code on his father's company Web site. The father is also being charged in the suit. Special police units and prosecutors raided their home on January 25 and seized the teenager's computer and cellular telephone. Then the police questioned the boy and his father for several hours.

The movie industry declares that the lawsuits demonstrate its determination to thwart online piracy; however, critics respond that control of the DVD player market is the industry's true incentive. Commercial DVD players are able to read CSS-encoded content, and the DeCSS program allows users of public-domain DVD-reading software to use DVDs as well. Linux programmers generally create noncommercial applications for their operating system and, in this case, determined the means to develop a public-domain DVD player. Defendants claim that their discussion about the technical insecurity of DVD players is legitimate, protected speech under the First Amendment.

The DVD-CCA maintains that the DeCSS program was created by reverse engineering in violation of the DVD program's shrinkwrap license agreement. Shrinkwrap licenses do not require licensees to affirmatively provide their consent but rather go into effect upon the installation and use of the software. The defendants respond that the DeCSS enables cryptographers to bypass the DVD security scheme without employing reverse engineering. Free speech groups nonetheless argue that reverse engineering of DVD programs is critical for systems interoperability and that debate about technical and scientific matters on the Internet are essential for the preservation of democracy and the promotion of innovation in cyberspace.

The Digital Millennium Copyright Act amended Title 17 of the U.S. Code to prevent the distribution of tools that can bypass encryption schemes. Courts can require violators of the Act to remove the codebreaking information from their Web sites and, moreover, order the "impounding" of "any device or product that is in the custody or control of the alleged violator and that the court has reasonable cause to believe was involved in a violation." Actual damages and additional fines, ranging from \$200 to \$2500, may also be assigned. Individuals prosecuted by the Justice Department for violating the Act may be fined a maximum of \$500,000 and sentenced to up to five years in prison.

The anti-circumvention provisions of the Digital Millennium Copyright Act can thwart efforts to test systems security and protect information processing systems. Programs that enable the decoding of encryption schemes are crucial to researching, developing, and testing copyright protection systems.

Useful Links

- The Global Internet Liberty Campaign, a coalition of more than 50 civil liberty groups worldwide, issued a [statement](#) claiming that the DVD-CCA's assault on individuals who discuss scientific and technical issues on the Internet could have a severe impact on free expression.
- The Electronic Frontier Foundation maintains an archive of court material relating to the [DVD-CCA case](#).
- The Electronic Frontier Foundation maintains an archive of court material relating to the [MPAA DVD cases](#).
- [Testimony](#) of EPIC Director Marc Rotenberg on the Digital Millennium Copyright Act and privacy, June 5, 1998.