

THE DIGITAL MILLENNIUM COPYRIGHT ACT

On October 28, 1998 President Clinton signed into law the Digital Millennium Copyright Act, Pub.L. 105-304 ["DMCA"]. The DMCA makes clear what was understood by many: that the U.S. Copyright Act protects the words that you are reading on this Internet page in the same manner as if they were in a book or a newspaper.

In the information age, content is king and the Internet has the potential to be a publisher nonpareil. As computers, television and the Internet become integrated, the packets of information that comprise motion pictures, sound recordings and textual materials race around the world. Whether this digital medium will fulfill someone's marketing dream and replace consumer desire to see and touch the flashy packaging of existing videocassettes, compact discs and books remains to be seen. It may be that as the Internet market develops the digital realm becomes a supplement to the advertising and distribution of hard copy goods, instead of a replacement distribution network. But regardless of how the market shakes out, the reality is that the Internet is merely a pipeline and does not work without the protected content of copyright owners. And these owners are understandably reluctant to place their works in an environment with unrestricted access and swift, pervasive, uncompensated distribution.

The DMCA was born out of this conflict between the Wild West spirit of the Internet and the regulated world of restricting the uses of copyright-protected content. In the mid-nineties, the Patent and Trademark Office ["PTO"] reviewed whether the then-existing version of the copyright law needed amendment in the nascent digital world. In Green and White Papers, published respectively in 1994 and 1995, the PTO recommended limited changes. However, digital copyright protection has been translated into encryption, other technological protection measures and electronic contracts, all of which restrict access to works. Users fear that fair use and other limitations on owners' exclusive rights will be restricted by unthinking technology. To address the viability of digital fair use, the PTO also held a Conference on Fair Use, publishing a largely inconclusive report last year.

On a parallel international front, the World Intellectual Property Organization ["WIPO"] considered the trans-global nature of the Internet world. In 1996 WIPO produced two treaties, which attempted to harmonize existing national laws and provide for global standards for digital protection. The DMCA incorporates the major provisions of the WIPO Copyright and Performances and Phonograms Treaties.

In addition, the new law:

- provides for certain limitations on Internet service provider liability;
- changes existing caselaw to permit the repair of computers by providers other than the owner or lessee of the machine without liability for making an unauthorized reproduction into RAM;
- allows for distance education and establishes exemptions for libraries and archives; and
- protects certain original designs.

Only time will tell how prescient Congress was in formulating the Internet business model that underlies the DMCA. But it is clear that only adequate protection for copyrighted content will fuel the growth of the digital environment.