

## U.S. Copyright Office Permits Circumvention of Technological Measures Controlling Access to Certain Copyrighted Works

College and university professors and students of film and related media will enjoy greater ease of access to films on DVDs following [Copyright Office guidelines](#) that went into effect July 27th. The new guidelines affect, among other things, the circumvention of technological measures taken by copyright owners to prevent the copying of their works distributed on DVDs. Such measures, known as “content scrambling systems,” or more generally as digital rights management (“DRM”) technology, are designed to inhibit access to copyrighted works for certain purposes. Sometimes, however, DRMs inhibit lawful access by scholars and documentary filmmakers, uses that might be governed by fair use principles and various exemptions enumerated in the Copyright Act.

Federal copyright law makes it illegal to circumvent DRM technologies, *17 U.S.C. § 1201(a)(1)*, but the law, popularly known as the Digital Millennium Copyright Act, is not intended to prevent a third party’s legal—albeit unauthorized—use of copyrighted materials. To that end, the Copyright Office, a branch of the Library of Congress, specifically exempts circumvention of DRMs as it relates to such legal third-party uses. In short, if the third-party use does not constitute copyright infringement, then circumvention of the applicable DRM is not unlawful either.

The newly announced guidelines have major intellectual property implications for institutions of higher learning. For example, by circumventing DRM technologies a film professor may take a *snippet* of a DVD for use in teaching a film studies course. Or a student film might clip a short scene from a movie to produce a video for a class project. Under the newly announced guidelines, such DRM circumvention is permissible so long as it is for a purpose otherwise permitted by copyright law.

Other likely beneficiaries of the new guidelines are documentary filmmakers and television news organizations, which have long complained that access to copyrighted materials are made unnecessarily costly by the application of DRMs. Other classes of intellectual property covered by the guidelines include computer programs that enable wireless telephone handsets to execute “apps”; video games (but only when the purpose of circumvention is to correct security flaws); computer programs blocked by obsolete or malfunctioning dongles; and literary works distributed as e-books that are programmed to prevent the enabling of read-aloud functions or specialized screen formats.

The Copyright Office reconsiders such guidelines biennially. This is the fourth time the Copyright Office, in conjunction with the Librarian of Congress, has issued anticircumvention guidelines. The first such ruling took place in 2000.

If you have questions about the issues discussed in this alert, please contact Womble Carlyle attorney [Mitch Tuchman](#) at [mtuchman@wcsr.com](mailto:mtuchman@wcsr.com) or (919) 484-2333.

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