Intellectual Property in the Digital Age

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Disclaimers

• I am not a law professor (but I understand technology)

• This is political: I have opinions

• The lecture is US-centric, though similar fights are playing out all over the industrialized world
Jefferson on Intellectual Property

“...the benefit even of limited monopolies is too doubtful to be opposed to that of their general suppression”

Eventually, with Madison’s help, he is convinced that monopolies may be granted to encourage inventions and creativity: for the public benefit.

He suggests copyright of 19 years;
Congress adopts 14 years + a possible 14 year extension

Today: 95 years if corporate; lifetime+70 years if individual

Fair Use

Not all copying requires owner’s permission
If it’s fair use, it doesn’t. Fair use depends on

1. The purpose and character of the use of copyrighted work
2. The nature of the copyrighted work
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole
4. The effect of the use upon the potential market for or value of the copyrighted work

Source: Electronic Frontier Foundation’s “Teaching Copyright”
http://www.teachingcopyright.org/handout/fair-use-faq
DMCA anti-circumvention provision: 17 USC § 1201

(a)(1)(A) No person shall circumvent a technological measure that effectively controls access to a [copyrighted] work

…

(a)(2) No person shall manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component, or part thereof, that –

(A) is primarily designed or produced for the purpose of circumventing a technological measure that effectively controls access to a [copyrighted] work

U.S. Constitution, First Amendment
Congress shall make no law … abridging the freedom of speech

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Two Competing Views

- Programs are bits
- In general, bits are information
- In particular, programs convey information to programmers and others
- Information is protected by freedom of speech Therefore, programs are protected speech

- Purpose of programs is to make computers work
- They are can be regulated as devices, even if they are sometimes speech Therefore, programs can be regulated with regard to their function, if not their content
“An item of some controversy … is the extent to which CSS-encrypted DVDs can be copied even without DeCSS. The record leaves largely unclear how CSS protects against the copying of a DVD…”

Universal City v. Reimerdes
Opinion by Judge Newman
US Court of Appeals for the Second Circuit

(Only a judge who doesn’t get the very basics of technology could have written this. Everyone understands that garbled text printed on a page can be copied letter-by-letter)

“Current jailbreak techniques now in widespread use utilize unauthorized modifications to the copyrighted bootloader and OS, resulting in infringement of the copyrights in those programs.”

Comment of Apple, Inc.
In Opposition to EFF’s Proposed Exemption for Phone Jailbreaking
(note 1: the OS is available free on Apple website)
(note 2: the copyright office granted
Some Interesting Links

- DMCA Takedown Hall of Shame: http://www.eff.org/takedowns
- An example consumer software license: http://www.worldofwarcraft.com/legal/eula.html
- Project Playlist: who is breaking the law when you click to play an mp3 if finds? http://www.playlist.com/
- Gallery of CSS Descramblers (arguing for code=speech) http://www.cs.cmu.edu/~dst/DeCSS/Gallery/
- The story of Matthew Crippen’s trial under DMCA http://www.wired.com/threatlevel/2010/11/crippen/