

## Dan Cohen's Digital Humanities Blog » Blog Archive » Understanding The 2006 DMCA Exemptions

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If Emerson was correct that genius is the ability to hold two contradictory ideas in the mind simultaneously, the American legal system just gained enough IQ points to join Mensa<sup>[1]</sup>. Already, our collective legal mind was showing its vast intelligence trying to square the liberties of the people with the demands of government and industry. For instance, in Alaska you can possess up to an ounce of marijuana legally, but can be charged with a felony for possessing more than four ounces or for selling the “illegal” drug. (Lesson: don't buy in bulk.) If you're gay you can legally join the United States military, but you can't talk about being gay, because that's illegal and you will be discharged. And now, more pretzel logic: as of last week, it is illegal to break the copy protection on a DVD or distribute “circumvention” technologies, but if you're a film or media studies professor you can break the copy protection for pedagogical uses. But how, you might ask, would a film or media studies professor with no background in encryption, programming, and hacking crack the copy protection on a DVD?

Good question. It was the first question I posed last weekend to Peter Decherney as my addled brain tried to grasp the significance of the new exemptions to the DMCA<sup>[2]</sup> granted by the Librarian of Congress, James Billington. Peter is a professor at the University of Pennsylvania and deserves all of our thanks for spearheading the effort to put some cracks into the DMCA. (Full disclosure: Peter is a very good friend. But I still think—objectively—that he deserves an enormous amount of praise for persevering in the face of the MPAA's lawyers to get the exemption for film professors. He told me the MPAA doggedly fights every proposed exemption, reasonable or not, so this was a long way from a trivial exercise.) It's unfortunate to see many initial reactions to the new exemptions lamenting that they are only for three years or that they merely enshrine the DMCA's destruction of fair use principles.

Well, sure. These new exemptions are indeed limited in scope and in an ideal world Peter and his colleagues should not have had to ask for these rights or fight for months to get them. (And then do the process all over again in 2009.) But there are a few bright spots here for those of us who believe that the balance between the rights of copyright owners and users of their content has swung much too far in the direction of the former.

First, as Peter pointed out to me, the exemption for film and media studies professors is the first time an exemption has been carved out *for a class of people*. It's not hard to imagine how this opens the door for other groups of people to evade the strict rules of the DMCA. Most obviously, many of my colleagues in the History and Art History department at George Mason University use film clips in their courses. Shouldn't they be exempt too? Shouldn't a psychology professor who wants to store clips from films on her hard drive to show in class as illustrations of mental phenomena be allowed to do so? The MPAA will undoubtedly say no every step of the way, but you can see how a well-reasoned and reasonable march of exemptions will begin to restore some sanity to the copyright regime. Academia could merely be the beachhead.

Second, and related to the first point, getting a DMCA exemption is a daunting task, especially for those of us without legal training. Peter and his colleagues have provided a blueprint for academics seeking other exemptions in the future. It would be good if they could pass along their wisdom. Thankfully, they have already set up [a website<sup>\[3\]</sup>](#) that will serve as a clearinghouse of information for the "educational use of media" exemption. A plainspoken description of how they got the exemption in the first place would be helpful as well.

Finally, the new exemptions have raised the odd contradiction I mentioned in the introduction to this piece, a contradiction that helpfully highlights the absurdity of current law. Film professors can now legally proceed in their work (saving clips from DVDs for their classes), except that they have to break the law to do this legal work (by encouraging and participating in an illegal market for cracking software). Similar

absurdities abound in the digital realm; recently the [MPAA went after a company<sup>\[4\]</sup>](#) that fills iPods with video from DVDs the iPod owners *have bought*.

So now the question becomes: Does our legal system follow the dictates of Emerson's genius, or of common sense? And how do those moderate pot smokers in Alaska get their marijuana, anyway?

This entry was posted on Sunday, December 3rd, 2006 at 11:36 pm and is filed under [Academia<sup>\[5\]</sup>](#), [Copyright<sup>\[6\]</sup>](#), [Hacking<sup>\[7\]</sup>](#). You can follow any responses to this entry through the [RSS 2.0<sup>\[8\]</sup>](#) feed. You can [leave a response<sup>\[9\]</sup>](#), or [trackback<sup>\[10\]</sup>](#) from your own site.

## References

1. ^ [Mensa](#) ([www.mensa.org](http://www.mensa.org))
2. ^ [new exemptions to the DMCA](#) ([www.copyright.gov](http://www.copyright.gov))
3. ^ [a website](#) ([www.asc.upenn.edu](http://www.asc.upenn.edu))
4. ^ [MPAA went after a company](#) ([www.eff.org](http://www.eff.org))
5. ^ [View all posts in Academia](#) ([www.dancohen.org](http://www.dancohen.org))
6. ^ [View all posts in Copyright](#) ([www.dancohen.org](http://www.dancohen.org))
7. ^ [View all posts in Hacking](#) ([www.dancohen.org](http://www.dancohen.org))
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