

## **Digital Rights Management: The Skeptics' View**

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A wide variety of technologies travel under the banner of “digital rights management” (DRM). In appropriate circumstances, these technologies can solve real problems for users, technology vendors, and content owners. Some, however, have made more ambitious claims for DRM, suggesting that these technologies represent the best hope for the entertainment industries as they struggle to evolve in a networked economy.

But DRM is not without costs. EFF believes that policy-makers should exercise healthy skepticism when examining DRM technologies, especially when DRM advocates seek legislative or regulatory intervention to shore up DRM technologies in the marketplace.

**It is too early to know what, if any, role DRM will ultimately play in the digital marketplace.** Some record labels have decided to “copy-protect” their CDs, and restrict their digital music services. Others, like Universal’s eMusic, have eschewed DRM altogether, in favor of giving consumers the flexibility they want. Market competition should choose the winner.

**DRM is ineffective at stopping “Internet piracy.”** Once upon a time, it may have been enough to create a technological “speed bump” that would “keep honest people honest.” With the advent of new technologies, including peer-to-peer (P2P), these approaches have become obsolete, as the failure of DRM on DVDs has demonstrated. In fact, DRM may be part of the problem, pushing frustrated consumers into the arms of unauthorized channels like Kazaa.

**Fair use must be preserved.** For two centuries, our copyright system has struck a careful balance between the public and copyright owners. As the Supreme Court has recognized, fair use is a critical part of that balance. Today, virtually every DRM system for books, movies and music seriously compromises fair use. Especially at risk are future fair uses—in 1972, no one could have foreseen the VCR and recognized time-shifting of TV as a fair use. Equally important are other copyright exceptions, including those for libraries, researchers, first sale and the blind.

**DRM must not impede innovation, competition and consumer choice.** DRM standards, especially when backed by regulatory mandates, can be used to create artificial barriers to competition and innovation in both content and player technologies. Policy-makers must be particularly vigilant when evaluating DRM standards developed by “inter-industry” coalitions, where cartels from different industries may be more interested in squelching competition and putting the brakes on innovation than serving the public interest.

**DRM technology mandates are bad policy.** Policy-makers should view calls for legislative or regulatory “tech mandates” to shore up DRM with special skepticism. When it comes to interfering in free markets for high technology, regulators are far more likely to do harm than good. DRM mandates are no exception.

**There are alternatives to DRM.** Collisions between copyright law and new technologies are part of our copyright tradition—consider the player piano, broadcast radio, cable TV, and the VCR. In most cases, the copyright industries have evolved and prospered in the marketplace. On the few occasions where copyright industries failed to adjust, Congress stepped in with compulsory licensing. What Congress has not done is to regulate innovation in the name of copyright. Policy-makers should be cautious when called upon to depart from our copyright traditions.