

# THE DIGITAL MILLENNIUM COPYRIGHT ACT: AN INTERNATIONAL ASSAULT ON FAIR USE?

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On November 4, 1998 President Clinton signed into law the Digital Millennium Copyright Act (The Act) bringing to a conclusion, at least temporarily, three years of struggle and compromise. The Act includes new rules for downloading, sharing, or simply viewing copyrighted material online. It is an attempt by the US to implement the WIPO (World Intellectual Property Organization) Copyright Treaty and the WIPO Performances and Phonograms Treaty. Some are cheering the passage of The Act and others are lamenting it. For the software and entertainment industries it is a triumph because now they can market their products on-line without fear of piracy. However many, including academics, educators, and researchers, view The Act as a set back, even an assault, on their traditional access to and use of information.

One of the desires expressed in the Preamble in both of the 1996 WIPO agreements is to develop and maintain the protection of the rights of authors, performers, and producers "in a manner as effective and uniform as possible". It makes it illegal to circumvent, or break through, the encryption technologies that protect intellectual property on the Internet. In The Act which President Clinton signed to implement the treaties, violators could be charged up to \$2,500 per act of circumvention beginning two years from now. In addition, The Act went farther than simply implementing the treaties. Beginning in 18 months, it will be a crime to create or sell any technology that could be used to break copyright protection devices.

How does fair use fit into the "new digital age"? Interestingly, The Act specifically states that it effects no change to the Fair Use Doctrine. But is that true? *Aliud dicere, aliud facere.* (It's one thing to say it, another to do it!) In the past it was not a crime to access or make a copy of a protected work. It was the misuse of that information, or the illegal copying and redistribution of that work which was unlawful. Under The Act this all changes. Now the simple act of accessing the material is

illegal no matter what your intentions as to the use of that material [4]. Library, consumer and academic groups are concerned that the protective digital devices, "wrappers", would render impotent the current fair-use provisions of the copyright law. These "wrappers" would prevent a professor from copying a section of a digital work for personal, research or instructional use. Libraries are also afraid that such systems could be used to create pay-per-use works that they could no longer freely lend to their patrons [5].

## References

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