



# POLICY ANALYSIS

## Circumventing Competition: The Perverse Consequences of the Digital Millennium Copyright Act

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**T**he courts have a proven track record of fashioning balanced remedies for the copyright challenges created by new technologies. But when Congress passed the Digital Millennium Copyright Act in 1998, it cut the courts out of this role and instead banned any devices that “circumvent” digital rights management (DRM) technologies, which control access to copyrighted content.

The result has been a legal regime that reduces options and competition in how consumers enjoy media and entertainment. Today, the copyright industry is exerting increasing control over playback devices, cable media offerings, and even Internet streaming. Some firms have used the DMCA to thwart competition by preventing research and reverse engineering. Others

have brought the weight of criminal sanctions to bear against critics, competitors, and researchers.

The DMCA is anti-competitive. It gives copyright holders—and the technology companies that distribute their content—the legal power to create closed technology platforms and exclude competitors from interoperating with them. Worst of all, DRM technologies are clumsy and ineffective; they inconvenience legitimate users but do little to stop pirates.

Fortunately, repeal of the DMCA would not lead to intellectual property anarchy. Prior to the DMCA's enactment, the courts had already been developing a body of law that strikes a sensible balance between innovation and the protection of intellectual property. That body of law protected competition, consumer choice, and the important principle of fair use without sacrificing the rights of copyright holders. And because it focused on the actions of people rather than on the design of technologies, it gave the courts the flexibility they needed to adapt to rapid technological change.

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