DRM and the DMCA

Copyright Law – Professor Grimmelmann
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the DMCA

- 1995: NII White Paper (executive branch)
  - ensuing legislation stalls in Congress
- 1996: World Copyright Treaty at WIPO
  - signed by the U.S. in 1997
- 1998: DMCA

access and rights-protecting controls

- access controls (§ 1201(a)): locks on the door of the room storing a book
- rights-protecting controls (§ 1201(b)): restrictions on behavior once inside
- the difference almost never matters (any competent DRM is an access control)

1201(a) vs. 1201(b)

	circumvention	trafficking
access controls	§ 1201(a)(1)	§ 1201(a)(2)
rights-protecting controls	-	§ 1201(b)

example: iTunes

- iTunes movie rentals are encrypted
  - how, then, can you watch them?
  - what happens after 24 hours?
  - how does iTunes enforce the limit?
- Fred alters his iTunes to disable the limit, then watches *Iron Man*. has he violated any of the provisions of § 1201?

words to work through

- "person" …"technological measure" … "work" …"access" …"effectively controls" …"ordinary course of operation" …"information" … "authority" …"copyright owner" … "circumvent" …"descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair."

iTunes example continued

- Cindy posts on her web page a program that spoofs the Apple server and supplies decryption codes. has she violated any of the provisions of § 1201?

more words

- “manufacture, import, offer to the public, provide, or otherwise traffic in”
- “techology, product, service, device, component, or part thereof”
- “primarily designed” …“only limited commercially significant purpose” … “is marketed”

sanity check

- what penalties do Cindy and Fred face?
- who is an *infringer*?
- who has violated the *DMCA*?
- these are not the same question; these are independent bases of liability

policy context

- why would a copyright owner use DRM?
- what business models are tied to it?
- how ought we to feel about this world?
- why do we need law on the subject, rather than leaving DRM up to the market?

Remeirdes

- what did DVD Jon do? how hard was it? why is the resulting program a DMCA violation?
- give me an argument that the resulting doctrine leaves *Sony* alone, and an argument that it eviscerates *Sony*.

Kelly and § 1202

- § 1202(a) prohibits the use of false "copyright management information"
- § 1202(b) prohibits removing CMI
- why didn't *Kelly* find a § 1202 violation when the search engine showed images without their captions?
- what does this have to do with § 1201?

the broadcast flag

- TV stations would have sent out programs with a bit saying "do not copy me."
- what are the potential attacks on this system? how do § 1201 and § 1202 respond to *some* of them? what's missing?
- an FCC rule would have required device makers to respect the flag, but the D.C. Circuit said the FCC lacked authority

next time

preemption