Desperately Seeking Copyright -- Digital Rights Management: It's Not Just About Security Anymore

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Desperately Seeking Copyright — Digital Rights Management: It’s Not Just About Security Anymore

by Edward Colleran (Director, Publisher Relations, Copyright Clearance Center, Inc.) <colleran@copyright.com>

To appropriate a few words from Mark Twain — now safely in the public domain — everybody’s talking about digital rights management (DRM), but is anyone doing anything about it?

The answer depends on one’s understanding of the neologism “digital rights management.” This overused phrase may mean different things in different contexts by different people. What we do know is that these evolving licensing solutions are changing the way librarians and content users acquire the rights to reuse copyrighted materials. It’s licensing and content at the same time and place, securely. It’s automated reprints fulfillment. It’s real-time access to the historical data on your permissions orders. It’s convenient, quick and customer-friendly. And it’s popping up on more and more online publications.

Only a few years ago, DRM was often talked about as either a panacea to all of publishing’s ills or as the traffic cop on the information superhighway. It is neither, and it never was.

Early DRM offerings, especially in non-text media, focused on controlling access. After all, this was something software could theoretically do, and since sales of these products were initially made to publishers, naturally enough their needs and interests were served first. This model has since proven to be inadequate, because users, either as direct consumers of content, or gatekeepers such as librarians, immediately, and appropriately, raised issues with these solutions, such as losing legitimate access to licensed content, “kludge-y” interfaces, inflexible software models, etc. Providers and publishers needed to revise their expectations, and improve their solutions. After all, if users perceive access to a particular publisher’s materials too burdensome, they will move on to other information sources, frustrated. This defeats the publisher’s purpose, which is generating greater royalties and lawful use of their content.

DRM has since evolved into technologies and applications that facilitate content distribution, access and, where appropriate, payment, primarily for a Web-enabled environment. DRM is not just about locking up content. That is a false impression. Purveyors of these solutions have advanced in recent years beyond offering mere lockdown of information through software encryption, and developed their systems into a smorgasbord of viewing and pricing options to fit differing requirements.

While DRM solution providers were adjusting their services to address market feedback, Congress was also paying attention to copyright issues involving digital content. An amendment to U.S. copyright law known as the Digital Millennium Copyright Act (DMCA), was enacted in 1998, and while it represented a valiant effort to keep up with the advance of digital technologies, it also left multiple questions about the downloading of music or copyrighted articles unaddressed. In the years since, courts have been kept busy on these issues.

Congress probably had rights management technologies like DRM in mind when it passed the DMCA in 1998. Certainly some of the language about “copyright management information,” “circumvention of technological measures” and “encryption technologies” leads in the direction of enshrining file security techniques and giving the old “lockout” idea the sanction of law. Many librarians and groups representing content users’ interests, such as the Electronic Freedom Foundation, believe that the DMCA went too far in restricting access to information, instead shifting the balance in favor of publishers while leaving unresolved questions about consumers’ rights to download and use digital information.

What might the congressional intent have been, as far as a social policy purpose? Although the DMCA has become controversial in the years since its passage, considering that the constitutional purpose of copyright is to promote the progress of science and useful arts” by securing “for limited times and purposes,” arguably Congress in this act was attempting to maintain the balance of interests envisioned at the heart of copyright law.

While debate over the DMCA continues, DRM technologies are moving forward to attempt to meet the wants and needs of both rightsholders and content users. A breakdown of both groups’ expectations follows:

**Rightsholders.** Either authors directly or through agents and representatives, such as publishers, continue to need and expect:

- Some degree of control over the distribution of their content;
- Oftentimes, but not always, a monetary return;
- A mechanism for updating the ownership of the rights; and
- A way of monitoring the integrity of their work when it appears in new venues.

**Information Professionals.** Need and have a right to expect:

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