Introduction to initial lawsuit brought by the Motion Picture Association of America
January 20, 2000

Plaintiffs, eight major United States motion picture studios, distribute many of their copyrighted motion pictures for home use on digital versatile disks ("DVDs"), which contain copies of the motion pictures in digital form. They protect those motion pictures from copying by using an encryption system called CSS. CSS-protected motion pictures on DVDs may be viewed only on players and computer drives equipped with licensed technology that permits the devices to decrypt and play—but not to copy—the films.

Late last year, computer hackers devised a computer program called DeCSS that circumvents the CSS protection system and allows CSS-protected motion pictures to be copied and played on devices that lack the licensed decryption technology. Defendants quickly posted DeCSS on their Internet web site, thus making it readily available to much of the world. Plaintiffs promptly brought this action under the Digital Millennium Copyright Act (the "DMCA") to [prevent] defendants from posting DeCSS and to prevent them from electronically "linking" their site to others that post DeCSS. Defendants responded with what they termed "electronic civil disobedience"—increasing their efforts to link their web site to a large number of others that continue to make DeCSS available.

Defendants contend that their actions do not violate the DMCA and, in any case, that the DMCA, as applied to computer programs, or code, violates the First Amendment. This is the Court's decision after trial, and the decision may be summarized in a nutshell.

Defendants argue first that the DMCA should not be construed to reach their conduct, principally because the DMCA, so applied, could prevent those who wish to gain access to technologically protected copyrighted works in order to make fair—that is, non-infringing—use of them from doing so. They argue that those who would make fair use of technologically protected copyrighted works need means, such as DeCSS, of circumventing access control measures not for piracy, but to make lawful use of those works.

[...] Proponents of strong restrictions on circumvention of access control measures argued that they were essential if copyright holders were to make their works available in digital form because digital works otherwise could be pirated too easily. Opponents contended that strong anti-circumvention measures would extend the copyright monopoly inappropriately and prevent many fair uses of copyrighted material.

Congress struck a balance. The compromise it reached, depending upon future technological and commercial developments, may or may not prove ideal. But the solution it enacted is clear. The potential tension to which defendants point does not absolve them of liability under the Computer code is expressive. To that extent, it is a matter of First Amendment concern. But computer code is not purely expressive any more than the assassination of a political figure is purely a political statement. Code causes computers to perform desired functions. Its expressive element no more immunizes its functional aspects from regulation than the expressive motives of an assassin immunize the assassin's action.

In an era in which the transmission of computer viruses—which, like DeCSS, are simply computer code and thus to some degree expressive—can disable systems upon which the nation depends and in which other computer code also is capable of inflicting other harm, society must be able to regulate the use and dissemination of code in appropriate circumstances. The Constitution, after all, is a framework for building a just and democratic society. It is not a suicide pact.