



## Copyright, the DMCA, and DeCSS

COMP 96 Lecture 13 part 2

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## Overview

- Brief Review
- What is CSS?
- DeCSS Timeline
- Where Things Stand
- A Closer Look at Code vs. Speech

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## Brief Review

- Copyright protects both producers and consumers
  - Authors, publishers: limited term monopoly
  - Consumers: public domain once copyright expires
- Fair use: permissible exceptions to copyright
  - Mainly for purposes that benefit the public good
  - 4-part test

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## Brief Review

- 1998: Congress passes the DMCA
  - Gives legal force to methods of access control
    - » Illegal to circumvent
    - » Illegal to distribute circumvention devices
  - There's a problem here: you're allowed to *use* the material but *gaining access* is illegal!

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## What is CSS?

- Content Scrambling System: controls access to DVD movies
  - Movie data is encrypted
  - Decryption scheme is secret; owned by DVD Copy Control Association
  - Licensed to manufacturers/authors of DVD players for rather a lot of money

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## DeCSS Timeline

- 9/1999: MoRE, DoD (hacking groups) reverse-engineer CSS decryption code
- 10/6/1999: DeCSS released, all CSS decryption keys broken
- Nov/Dec 1999: DeCSS code widely mirrored
- 12/28/1999: DVD CCA files suit against individual owners of web sites hosting DeCSS
- 1/19/2000: DeCSS code appears in court proceedings (public record!)

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## DeCSS Timeline

- 1/21/2000: Preliminary injunction issued against website owners
- 1/24/2000: Jon Johansen (16-year-old Norwegian hacker) indicted, arrested, and held for questioning (!)
- 3/6/2000: MPAA files suit against 2600 (hacker magazine) for providing a *list of links* to sites that host DeCSS

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## DeCSS: First Verdict

- DeCSS is not speech, it is a circumvention device, and as such is illegal under the DMCA.
  - Judge Kaplan's argument: *source code is not speech*.
- Distribution, via download *or even linking*, is also illegal – but only in New York.
  - 2600 is a magazine. Kaplan's argument: it's not speech, so this isn't a prior restraint.

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## DeCSS: Since then...

- Verdict appealed!
  - Many, many *amicus curiae* briefs filed:
    - » Computer code is speech
    - » Earlier ruling infringes upon 1<sup>st</sup> Amendment
    - » Earlier ruling has no valid basis in law
  - Arguments heard late this spring
  - Now we wait...

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## A Closer Look at Code vs. Speech

- Kaplan's ruling: since code has some functional component (you can run it, or mechanically transform it into something that can be run), it is not expressive speech deserving of 1<sup>st</sup> amendment protection.
  - What about code that *can't* be so transformed?
  - Where do we draw the line between what is and isn't speech?
- Let's look at this...
  - <http://www.cs.cmu.edu/~dst/DeCSS/Gallery/>

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