

TO: Federal Trade Commission  
FROM: Kirk Biglione, Oxford Media Works  
RE: Comment for FTC Town Hall on Digital Rights Management Technology  
DATE: January 11, 2009

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While no one can doubt the importance of protecting the intellectual property rights of copyright holders, it is equally important to protect the rights of consumers. Unfortunately, where DRM is concerned, consumers have no rights.

As a result, consumers have been the victims of numerous DRM related debacles over the past several years. There have been dozens of DRM incidents affecting an untold number of consumers, including:

- The Sony rootkit incident, where spyware was unknowingly installed on consumer's computers as part of a DRM system designed to prevent copying of CDs. Reference: [http://en.wikipedia.org/wiki/2005\\_Sony\\_BMG\\_CD\\_copy\\_protection\\_scandal](http://en.wikipedia.org/wiki/2005_Sony_BMG_CD_copy_protection_scandal)
- Major League Baseball discontinuing support for digital videos that were sold to consumers as purchased media. Reference: <http://www.medialoper.com/hot-topics/drm/mlb-and-drm-a-match-made-in-hell/>
- eBook supplier Overdrive's recent termination of a contract with online ebook retailer Fictionwise. The decision threatened to render 300,000 ebook units unreadable. While Fictionwise took steps to ensure that many of the books would be offered to consumers in an alternate format, they have been unable to provide consumers with replacements for all of the affected books. By the end of this month, many consumers will find that a portion of their digital libraries have been rendered unreadable. Reference: <http://www.fictionwise.com/help/Overdrive-Replacement-FAQ.htm>

Currently consumers have no recourse when their digital movies become unwatchable, their digital music become unlistenable, or their digital books become unreadable. Clearly, this needs to change.

Beyond the well-publicized incidents mentioned above, DRM has other undesirable effects on consumers:

- **DRM restricted media leads to brand and device lock-in.** Because there are currently no cross vendor DRM standards for digital media products, consumers are in the position of having to pick a format now, and hope for the best. If, at some point in the future, a consumer decides to change brands, that consumer will very likely need to repurchase all of his or her digital media. Likewise, when a vendor abandons a DRM system, consumers are left with a library full of unusable media.
- **Limitation on legitimate use of content.** Many media usage scenarios that are generally considered to be fair use are not supported by DRM. As a result, DRM effectively holds consumers to a higher standard than current copyright laws.

The great promise of DRM is that it will "enable a marketplace for digital content". The theory is that DRM restrictions will prevent media piracy while simultaneously "keeping honest consumers honest".

The unfortunate reality is that, despite the proliferation of DRM schemes, piracy continues to be a problem. Every widely used DRM system has been broken. Pirates continue to steal media products while legitimate consumers suffer with the arbitrary restrictions and limitations of DRM.

One of the great ironies surrounding DRM is that honest consumers frequently resort to dishonest tactics in order to use legitimately purchased media products in ways that are perfectly legal.

A healthy marketplace for digital media requires a balance of rights between the copyright holder and the consumer. As it stands now, there are no consumer protections related to DRM.

At minimum, consumers should have the following rights:

- The right to convert digital media to alternate formats for use on otherwise incompatible devices. In the United States this right is currently restricted by the anti-circumvention clause of the DMCA.
- The right to remove DRM on legally purchased media files when the source of the media file has ceased offering authorization for the DRM protecting that media.
- Full disclosure of any and all DRM limitations should be printed at the point of sale for any DRM restricted media. This disclosure should include the risk of product obsolescence that might occur should the vendor discontinue support for the DRM system in question.
- Fair notice when support for a DRM system is being discontinued. This notice should provide consumers with a period of at least 90 days to prepare for media obsolescence.
- Remedies to recover media that has been rendered useless by an abandoned DRM system, or some equivalent refund when media cannot be replaced or recovered.