



Comments submitted to FTC
DRM Town Hall – Comment, Project No. P094502

February 2009

Summary

The intent of Digital Rights Management (or DRM) is for the originator of the work, to attempt to control the ways in which the work can be used, after sale or license. Most often, these take the form of copy restrictions, but can include restrictions in other ways.

Ultimately, DRM is an all-or-none measure, that seeks to control, without reference to context. A backup copy is allowed in many jurisdictions, while copying for the purposes of copyright infringement is not. However, both will be restricted by DRM. Many audio disc copy protection systems (which are DRM) utilise bad sectors to cause faults when copying is attempted, but which can also regular playback in some devices. Other methods might include using computer autoplay systems to install software to prevent copying, but which can leave systems vulnerable to malicious code.

It is thus gratifying that the Federal Trade Commission sees fit to consider the impact on consumers of DRM, and we welcome the opportunity to highlight, for the commission, our experiences of DRM, and it's impact on consumers.

We have split this response by category of media, to reflect the differing methods and approaches used in each sector of industry.

Films

Standard DVDs contain two forms of DRM; region coding, and Content Scrambling System (CSS). The former is used to limit the geographical regions where such discs can be played, the latter attempts to prevent copying. CSS was effectively bypassed many years ago, and only deters the most casual attempts to copy. Information and tools to produce 'DVD-rips' or 'DVDr's of DVDs are widely available on the internet. When these copies are created, not only is the CSS system circumvented, but the region coding is also made irrelevant. With the ubiquity of internet file sharing, especially through mass distribution protocols like bittorrent, any attempt to stagger releases, enforced via region coding, will just drive people to internet releases.

We track, on a weekly basis, the most popular films on bittorrent sites, and with few exceptions¹, we can say that a film is most popular right as it comes out on-line, with a popularity of only a few weeks². This is usually when retail availability is more widespread.

Television

There have been some occasions when DRM is employed on television. NBC has utilised the

¹ <http://torrentfreak.com/top-10-most-pirated-movies-of-2008-081211/>

² <http://torrentfreak.com/tag/dvdrip/>

'Broadcast Flag' at times³ which has inconvenienced users from using time-shifting by supported machinery. There has also been some concern over certain lobby groups pushing for Selectable Output Control⁴, although it seems that consumers will not have to replace the 20 Million⁵ or so TV sets such a program would leave unusable in those instances.

Audio

The 'red book' standard for CD audio specifically excludes forms of copy protection as part of the standard. The majority of audio copy protection systems violate the standards, in fact, and are thus prohibited from carrying the 'compact disc' logo consumers are familiar with. However, the absence of a near universal logo is not the greatest indicator for consumers that such a disc does not follow standards that have been in place for almost thirty years. In fact, the logo is so common, that it has passed into an unseen background by the consumer. We would suggest that such discs are required to carry a vivid, and easily spotted logo or symbol, indicating that copy protection is in use on that disc. Consumers need to be made aware of the status of such discs before purchase, as most retail outlets will not allow the return of opened discs.

Online music is little better. The UK's Department for Business, Enterprise and Regulatory Reform (BERR) recently did a consultation into file sharing, and several responses⁶ from individuals pointed out that two different DRM based music services – yahoo music and MSN music - have closed down recently. This leaves people who have purchased music from them, with no easy way to use the music they have purchased. The only solution would be to burn music to CDs and 'rip' them back as MP3's, sans DRM, which could leave such users in uncertain legal territory.⁷

The music industry is starting to learn the error of it's ways though. In it's annual report⁸, the IFPI actually boasted that more DRM-free tracks are becoming available⁹, finally accepting that DRM is not good for the consumer.

Software

Software is the main area where consumers interact with DRM. It appears on many games, and business software, from operating systems on down.

The most common product with DRM is, of course, Microsoft Windows. It's windows Genuine Advantage (available in XP and later versions) attempts to determine if a copy is a legitimately purchased copy. It has had problems, including a number of false-positives – flagging as counterfeit legitimate copies – and system downtime. One of the most prolific of these was August 25th 2007¹⁰,

3 http://news.cnet.com/8301-10784_3-9943631-7.html

4 <http://www.publicknowledge.org/issues/soc>

5 http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520186532

6 <http://www.berr.gov.uk/whatwedo/sectors/digitalcon/p2presponses/page49707.html>

7 <http://www.eff.org/deeplinks/2008/07/here-we-go-again-yahoo-music-throws-away-drm-keys>

8 <http://www.ifpi.org/content/library/DMR2009.pdf>

9 <http://torrentfreak.com/music-piracy-not-that-bad-industry-says-090118/>

10 <http://blogs.msdn.com/wga/archive/2007/08/27/update-on-validation-issues.aspx>

although it has happened on other occasions,¹¹ affecting thousands of people.

With games, perhaps the most well known recent example is 'Spore'. This game uses an on-line verification, and limited installations to just three PC configurations at the time of release, with a fourth given if the publisher were called on the telephone and the situation explained. This produced a huge public backlash, perhaps exacerbated as the packaging gave no indication at all that any form of DRM was in use. The backlash made Forbes magazine¹², and flooded amazon.com with bad reviews. Perhaps the most illustrative point to come from Spore, regarding DRM, is that despite having the more restrictive DRM of any mainstream game, ostensibly to reduce copyright protection as much as possible, the game quickly rocketed to be the most downloaded PC game, with over half a million downloads in the first ten days¹³, and around 1.7 Million by the end of 2008¹⁴. A lawsuit has also been filed over the DRM¹⁵, and its technological methods.

However, Spore is not alone in using DRM, nor being caught out by it. In January 2009, the PC game 'Gears of War' refused to load for anyone wishing to play, citing file modification errors. The problem was caused by a digital certificate which expired on January 28th 2009. The certificate enforced non-modification of the main game code, in an attempt to ensure fair play on-line. However, it affected not only on-line play, but off-line play, and even level creation, restricting people's ability to create modifications (or 'mods') which can expand their game playing. 'Mods' are a common aspect of such games. While some people (including the game's publisher) claim it's not DRM, by its actions, it must be considered as such. It also leaves worrying questions for the future of the game, especially for a new purchaser of the game, with little or no on-line access.

Ubisoft has also had incidents involving DRM. In July 2008, a member of Ubisoft's support staff released a fix to allow players of "Rainbow 6: Vegas 2" that had bought the game via the Direct2Drive (D2D) retail system, to upgrade to the latest version. However, the patch was the file used to bypass the DRM on copies downloaded from peer-to-peer websites (a 'crack')¹⁶. The crack was only required because D2D users were unable to upgrade, due to the added DRM D2D imposes. A major upgrade, which included new play modes, had been made available for those with a physical copy some time earlier, which was also accessible to those that had used P2P to obtain the game. The added DRM of the D2D system prevented its customers from using that patch. As is a recurring theme, legitimate customers are inconvenienced, but no-one else.

It is not always game publishers that bring controversy to the DRM situation, though. Starforce, a company that provides DRM, posted a link to a torrent of Galactic Civilisations 2 – a game produced by a company that is against DRM technologies¹⁷ such as Starforce's products. The employee posted the link¹⁸ as an example of why DRM should be used. However, in the last several years, there has been NO game that has not appeared on p2p sites, DRM or not; there have only been a handful this decade that have taken more than a month.

11 <http://blogs.msdn.com/wga/archive/2006/10/05/WGA-service-outage.aspx>

12 http://www.forbes.com/2008/09/12/spore-drm-piracy-tech-security-cx_ag_mji_0912spore.html

13 <http://torrentfreak.com/spore-most-pirated-game-ever-thanks-to-drm-080913/>

14 <http://torrentfreak.com/top-10-most-pirated-games-of-2008-081204/>

15 <http://www.courthousenews.com/2008/09/23/Spore.pdf>

16 <http://torrentfreak.com/ubisofts-no-cd-answer-to-drm-080718/>

17 <http://forums.galciv2.com/index.aspx?AID=107193>

18 <http://www.galciv2.com/temp/starfo2.jpg>

Conclusion

There is no doubt that DRM stops the casual copy. However, it is all that will be stopped. Anyone with any significant wish to bypass DRM will easily find information on doing so on the internet, or copies that have the DRM removed already. The only people that DRM actually affects then, are the legitimate consumers. That there is any need at all for DRM is debatable, that it utterly fails in it's stated purpose is not.

We suggest to the commission that DRM is highly regulated, and if possible, prohibited from use. We would also note that while any number of independent sources can attest to the uselessness of DRM, there are no independent or fully sourced data to back any claims that DRM is effective, or that the problem DRM generally seeks to address is as bad as claimed. From all the evidence we have gathered, DRM incites copyright violations, it does not prevent it.

About TorrentFreak

TorrentFreak is a news site that is dedicated to bringing the latest news about BitTorrent and everything that is closely related to this popular filesharing protocol. We are not a news aggregator, but focus on unique and fresh stories. TorrentFreak is where news and filesharing collide. We try to be the source of all the latest breaking news in the p2p world. There are currently over 650,000 subscribers to it's RSS feed, and thousands read the site every day.

Significant stories first broken by TorrentFreak include the network neutrality violations¹⁹ by Comcast, that led to the FCC investigation, as well as the leak of emails²⁰ from antip2p company MediaDefender, showing the ineffectiveness of their activities, and how the artist BuckCherry leaked their own music, and tried to blame it on file sharing.²¹

TorrentFreak is based in the Netherlands, with offices in the UK and USA.

19 <http://torrentfreak.com/comcast-throttles-bittorrent-traffic-seeding-impossible/>

20 <http://torrentfreak.com/mediadefender-emails-leaked-070915/>

21 <http://torrentfreak.com/band-leaks-track-to-bittorrent-blames-pirates-080731/>