

Global Forum 2006

THE CHALLENGE OF BALANCING DRM, COPY PROTECTION AND PRIVACY RIGHTS

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PRIVACY DEFINED

- **“The right to be left alone.” Justice Louis Brandeis**
- **Protection from government intrusion: Constitution/Bill of Rights**
- **Protection of personal information: Data protection laws**

PRIVACY RIGHTS IN THE UNITED STATES

- **No comprehensive statute**
- **Instead, U.S. privacy laws take a piecemeal approach comprised of various sector-specific federal and state statutes, enforcement actions by the Federal Trade Commission, and self regulation**

EXAMPLES OF U.S. PRIVACY LAWS

- **Major Federal Statutes**

- Health Insurance Portability Protection Act (HIPAA)
- Children's Online Privacy Protection Act (COPPA)
- Federal Credit Reporting Act
- Gramm-Leach-Bliley Act (Privacy Title)

- **State Statutes**

- Cable Communications Privacy Act
- Computer Fraud and Abuse Act
- Employee Polygraph Protection Act
- Identity Theft and Assumption Deterrence Act

PRIVACY RIGHTS IN EUROPE - THE EUROPEAN UNION DATA PROTECTION DIRECTIVE (DIRECTIVE 95/46/EC)

- **Regulates the processing (e.g., collection, storage, use) and transfer of personal data**
- **Required the 15 Member States to implement national privacy legislation, with minimum standards set by the Directive**
- **Also required the creation of a Data Protection Agency in each Member State**

WHAT IS COPY PROTECTION?

- **Measures to prevent the unauthorized duplication of information**
- **Example: Content Scramble System protects a DVD by encrypting its contents. The encryption key cannot be written onto a DVD-R or DVD-RW; thus, unauthorized copies of the DVD cannot be read or played.**

DIGITAL RIGHTS MANAGEMENT (DRM)

- **Definition: Technologies that protect copyrights by controlling the use of digital files. DRM is more general than copy protection because DRM includes all types of management, including copy restrictions.**
- **Such technologies prevent users from accessing, sharing, copying, printing, saving, or otherwise using the protected files.**
- **DRM technology can be contained in the operating system, software, or hardware of the device.**
- **Also known as Content Management Systems (CMS) or Content/Copy Protection for Removable Media (CPRM)**

HOW DRM WORKS

- **Containment:** Content is encrypted in a shell that is accessible only by authorized users.
- **Marking:** Content is marked or flagged to signal the presence of copy protection.

THE GROWTH OF DRM

- **Economic Driving Forces:** Businesses have strong economic incentives to develop copy protection.
- **Legislative Driving Forces:** Legislation such as the Digital Millennium Copyright Act – 1998 federal statute that increases copyright protection by creating civil and criminal penalties for the creation/distribution of tools to circumvent DRM systems

PRIVACY ISSUES RAISED BY DRM AND OTHER COPY PROTECTION REGIMES

- **An individual can be identified and his or her personal data and usage of digital files can be monitored, collected or tracked by DRM, which requires authentication of the user's identity before granting access to the digital files**
- **A user's preferences can be comprehensively profiled using DRM**
- **DRM imposes direct constraints on personal, private activities (e.g., downloading music, reading e-books, visiting websites)**

CAN DRM AND PRIVACY RIGHTS COEXIST?

YES. The effects of DRM on privacy rights can be minimized. Some suggestions:

- **Implement data protection policies**
- **Limit amount of data collected to the bare minimum (e.g., username and password only) needed to control access/usage**
- **Disallow the selling of personal data collected via DRM technologies**
- **Minimize the number of employees who have access to data and make them contractually obligated to refrain from disclosure of such data**

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