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### **The Dilemma of CSS encoding**

DVD producers try to protect their copyright interests by CSS (Content Scrambling System) encoding their disks. Now CSS compliance is strictly enforced in the U.S. While this built-in protection of copyrighted property is theoretically a very convenient feature to use, it raises a very important question---when we buy a CSS encoded DVD, do we really own it? And why is it illegal (and, supposedly, unethical) to copy a part of that DVD, even though we paid the full price for it and intend to use it within the “fair use” parameters?

Not only the discs are encoded with CSS, but the playback devices are programmed to read or reject certain DVDs. Region control system is included in this encryption, so that the company can control the prices and “fair trade” of DVDs everywhere in the world. For instance, if you buy a brand new HP laptop, it will play Russian and U.S. manufactured DVDs interchangeably four to five times before it will make you choose your permanent region, which will mean that you will be unable to watch anything other than U.S. encoded DVDs. It is also a question of price and availability. The only reason CSS encoding works in the U.S. is because it is a secluded country with a reasonably self-sustained market. It doesn't work in countries that have a flow of DVDs across borders without running into technological and ethical problems.

So, it's not a surprise that from September 1999 to January 2000, a Norwegian teenager Jon Johansen (a.k.a. DVD-Jon) developed a program that removes CSS encoding, also called DeCSS. (O'Brien) Soon DeCSS was posted on the internet, which, of course infuriated the movie production companies, and in January of 2000, Jon Johansen was brought to court by Norwegian Motion Picture association together with the US Motion Picture Association of America, who filed charges against the hacker.(Eschenfelder) The

court case lasted three years, and in late 2003, the Norwegian court ruled that “the action was not...an infringement of the provisions of the copyright act.” (Eschenfelder) The development of the program was found not illegal, and the appeal to the Supreme Court was rejected. If DVD-Jon lived in the US, he would probably be accused of violating Digital Millennium Copyright Act (introduced in 1998) and he would have faced hacking charges. DeCSS is still illegal in the U.S. and many EU countries.

From ethical point of view, DeCSS finally gives the purchaser of the DVD the opportunity to fully own the DVD. According to the “fair use” clause, if one wanted to appropriate a part of a work, critique it, use it for educational purposes, he/she should be able to copy a part of the work and use it for those use the product they bought for those projects. The same rules should apply to movies as they do to books and works of art. One should be able to copy a part of a movie, incorporate it into a lecture, use it for a project, critique it, and use it in creative ways. Recent technology allows an author/artist to lock his/her work to protect from copying onto a remote computer for free, but once the buyer pays the price of the artwork or a text, the lock is removed, and one can do what ever he/she pleases with his/her purchase. The DVD encoding (before DeCSS) was permanent. Even if the copyright expires, one still won't be able to copy a part of this DVD without a cracking system.

James Boyle sees the encryption and patenting of software as a way to “diminish opportunities for creativity” (119), and I agree with him. Large corporations that could in theory use and repurpose the content of the movie own technology that would do it anyway, so why the small-scale consumer should be not allowed to select parts of the movie and copy them? Especially, due to the nature of the DVD technology, the original burned DVD cannot be tempered with, so that “the original art” will not be vandalized. If one copies the movie to his/her computer, one can watch it without a DVD drive, and it doesn't mean that one would temper with the integrity of the film. For the most part, it would happen for convenience

purposes.

Also, the cynical part of me wants to say: If their technological locks/digital rights management technologies are not good enough to protect their product, they should DeCSS. Movie business as well as software development is a competition. If information (e.g. in the spleen case) can't be "owned", and only the creative genius of the scientist/programmer gives life to that invention/information and makes it usable in a certain way, why couldn't Johansen then copyright his invention and it being a competition for CSS?

Here is an illustration for what I mean. Sony and JVC used to encode their cameras so that it is very hard to use any software to edit their home-made videos with any programs other than the ones provided with their products (which are only given to a buyer in trial version). However, there are perfectly legal, copyrighted programs that are out there that will convert the unreadable and unmanageable video file your camera produces into other video files. Producing a "counter-program" in this case is not illegal or unethical. Companies like Xilisoft, NCH Software and others are participants in the "healthy" race after profits. But because the movie industry is so big and influential, US is more aggressive in making laws to protect it. So, as it is unethical for the companies deliberately prevent people from managing their movie files, it is unethical to use CSS encoding on DVDs. CSS encoding seems to be overstepping the boundaries of copyright, and I think DVD-Jon has a full right to fight that by breaking the code.

## Works Cited

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