

Free Software Matters: Exploring the Frontiers of Unfreedom

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Last month I was writing about Disney's Michael Eisner and his legislation in the US Senate to prohibit free software, declaring his movie company's divine right to control all the technology on earth in order to keep Mickey unfree. Mr Eisner is a serious nuisance, but he is by no means the only part of the content distribution system actively trying to eliminate free software at the moment.

Earlier this week, a federal trial court in San Francisco rejected free speech arguments brought by a Russian software firm, Elcomsoft, that it should be protected against charges of criminal violation of the US Digital Millennium Copyright Act. Elcomsoft distributes internationally via the net its eBook formatting software, which can turn Adobe Systems' encrypted eBook data into PDF, in which format the text can be quoted, modified, and otherwise subjected to "fair use" under copyright law. Elcomsoft's product is based on the academic research of its employee, Dmitry Sklyarov, who was charged in the case during a visit to the United States, and against whom charges were dropped in return for his testimony against Elcomsoft. Replacing the human defendant Sklyarov with an intangible foreign corporation has stopped hackers from marching in a picket line around Adobe's Silicon Valley headquarters, but it does not lessen the danger to free speech. Agreeing with Elcomsoft, against the objections of the United States Government, that software is speech, the trial judge nonetheless held that computer programs are not entitled to the full measure of protection under the First Amendment because they are also "functional," and therefore blend speech and conduct.

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This ruling follows the holding of the Federal Court of Appeals in New York last autumn, rejecting a similar First Amendment challenge to the DMCA in a case brought by the eight largest movie studios against the magazine *2600*, which had covered as a news story the controversy over the DeCSS program for recovering unencrypted video and audio from copy-protected DVDs, and included links to the software itself.

The Elcomsoft case joins the text publishers to the movie studios in the new twenty-first century position of the media moguls: "we're for free speech only so long as it's ours." General technical information is now being censored on the ground that, when embodied in freely available computer programs, it is bad for the business models of the owners of culture.

Later this month we will see another, and in the long run even more serious, attack on the freedom of code. As the US supposedly moves closer to digital television broadcasting, the content producers and the broadcasters are suffering anxiety over the possibility that their content may be modified (so as, for example, to remove commercials) and redistributed or shared among viewers. We expect imminently the announcement of an inter-industry consensus to require all hardware and software capable of receiving US digital broadcast signals to observe the studios' chosen copy-protection scheme. Such a consensus, enacted by Congress or embodied in administrative regulations, would prevent free software from being part of any digital television "set-top box," personal video recorder, or other broadcast-related multimedia product. This will, not coincidentally, give Microsoft a monopoly in the field, and cost consumers in the US and ultimately around the world, billions of dollars.

Nor will the damage be limited to special-purpose digital TV products. We shall soon see the importance of "software controlled radios," which are devices that replace special purpose circuitry for the interpretation of analog and digital broadcast signals with software running on general purpose computers. Your notebook computer, with free software and a simple antenna, could serve every purpose served by any radio, television, or cellular telephone device. Free software for such applications is already under development by, among other parties, the Free Software Foundation. Such programs will have to be prohibited altogether if the digital broadcast protection rules are to have any reality. Which means that another whole class of technical information will have to be censored everywhere on earth, regardless of free speech rules. Here too we will need to fight back, over our right to express our own ideas to anyone even if those ideas are the kind that computer programs best express. The fight will begin within the next year in the US and spread elsewhere at the speed of, well, radio waves.

And we will see again why, in the movement for freedom of speech and thought, Free Software Matters.