

Copyright World  
last word column, December/January 2006

## IS COPY CONTROL DEAD? IMPRESSIONS ON A VOLT-FACE IN DIGITAL RIGHTS MANAGEMENT

A couple of weeks ago I spoke at a music industry event where I also had appeared in 2005 ([www.musictank.co.uk](http://www.musictank.co.uk)). Last year, the industry was still enthralled by its own piracy rhetoric, with digital rights management (DRM) technology and criminal enforcement supplying the answers to unruly consumer behaviour. This year, in the wake of the corporate buying spree on Internet networking sites – such as YouTube and MySpace (see my last column) – the mood had changed completely. Many speakers doubled as futurologists and confidently predicted a world in which all users will have irrevocable access to all files at any time. The question was no longer how to distribute content (which had left owner control), but how to make money from what users do. Peter Jenner, a well connected manager of artists such as Pink Floyd, The Clash, Ian Dury and Billy Bragg, and author of an enlightened recent report on the industry's responses to technology (*Beyond the Soundbytes*), cited the chairman of BMG (one of the major record companies) with the immortal words: "DRM is dead".

Now: DRM is short hand for a technology that controls copying by packaging content files with software that prescribes conditions of use. As a concept, it has underpinned the major legislative copyright interventions of the last decade, from the 1996 WIPO Internet Treaties to the 1998 Digital Millennium Copyright Act (DMCA) to the European Information Society Directive (2001/29/EC). At their core are draconian legal remedies against the circumvention of effective technological (copy protection) measures and the removal and alteration of electronic rights management information.

### **Users and DRM**

There can be no doubt that many consumers do not like DRM. In 2005, Sony/BMG's rootkit software that secretly installed executables onto computer drives during music upload caused an outrage in the run-up to Christmas, and may have contributed to the subsequent collapse of Tower Records.

There can also be no doubt that copy control measures are beginning to trouble policy makers where they interfere with essential user freedoms. For example, the Intellectual Property Manifesto launched on September 25<sup>th</sup> by the British Library is concerned by the effects of DRM measures on the preservation of copyright materials (the document is available at [www.bl.uk](http://www.bl.uk)). Almost simultaneously, the British Academy has conducted a policy review under the chairmanship of the respected economist Prof. John Kay on the effects of copyright on research in the humanities and social sciences. Here too digital rights management systems are singled out as a threat to the copyright exemptions designed to facilitate research and scholarship (report of September 18<sup>th</sup>; available at [www.britac.ac.uk](http://www.britac.ac.uk)). This list could go on and on, from the UK All Party Parliamentary Internet Group investigating DRM and creative commons licences, to the European

Commission's "Roadmap" tracing the future of copyright levies in the light of digital rights management technologies.

If DRM is dead, do we need no longer worry? As always, a focus on the music industry tends to distort the vision. It is true that music has been exposed to the threats and opportunities of digitisation early on, and with particular force. Yet music consumption is in a peculiar way bound up with our identities – see Lee Marshall's excellent sociological study on *Bootlegging* (Sage, 2005).

Thus, collecting, adapting and sharing are features of the musical experience that we may not find in pay-television, legal databases (such as Westlaw) or in University Intranet environments (such as Blackboard). Here, users have not yet found a way of escaping the access and use prescriptions of copy control technology – or perhaps, more importantly, users do not even feel the need to escape.

### **DRM no substitute for copyright policy**

One point of view shared by the interventions of the British Library and the British Academy is that neither digital rights management systems nor licensing terms can be allowed to act as substitutes for copyright policy. It is for society as a whole to devise a framework that governs the production and use of information. That must include keeping some user behaviour beyond owner control, if necessary by regulatory intervention.

In many consumer markets, labelling requirements are an alternative solution that may be more efficient, as the solution can be enforced by the discipline of consumer choice. We simply should not pay for content that comes with restrictions we do not want.

### About the author

Martin Kretschmer is Professor of Information Jurisprudence and Joint Director of the Centre for Intellectual Property Policy & Management ([www.cippm.org.uk](http://www.cippm.org.uk)) at Bournemouth University, UK. He is also project director (with Prof. Lionel Bently) of a major Arts and Humanities Research Council (AHRC) project on copyright history at the Centre for Intellectual Property & Information Law, Cambridge University (2005-7). Previously, Martin was consultant editor at BBC Worldwide (1994-5) and a faculty member at City University's Cass Business School, London (1996-9).