Reverse engineering of third-party technological protection measures

Von
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MEMORANDUM

Issue

Does is constitute a violation of Sec. 1201 or any other provision of the U.S. Copyright Act to remove or reverse engineer a third party's copy protection IP from a copyright protected work for the purpose of coming up with a clean file as long as the copyright owner of the copyright protected work gives explicit permission for such removal?

Brief Answer

No.

Analysis

(a) According to Sec. 106(1) of the U.S. Copyright Act, the copyright owner of a work has the right to reproduce his work in copies or phonorecords according to his discretion. He has, therefore, the right and the authority to remove technological protection measures from his work that limit him in his ability to exploit this right. Such removal does not constitute a circumvention of a technological protection measure pursuant to Sec. 1201(a)(1)(A) of the U.S. Copyright Act, because the removal is done with (and not without) the authority of the copyright owner; *see* the definition in Sec. 1201(a)(3)(A) of the U.S. Copyright Act.

(b) The copyright owner has the right and the authority to reverse engineer technological protection measures contained in his work. In this respect, he is allowed to descramble his scrambled work, decrypt his encrypted work, or otherwise avoid, bypass, remove, deactivate, or impair a technological protection measure contained in his work. According to Sec. 1201(a)(3)(A) of the U.S. Copyright Act, this does not constitute a circumvention of a technological measure, since this is done with the authority of the copyright owner.

Davidson & Associates v. Jung, 2005 U.S. App. Lexis 18973 (8th Cir. Sept. 1, 2005) can be distinguished from the above issue in that the copyright owner, who was at the same time the owner or licensee of the technological protection measures, had not given such an authority.

(c) Notwithstanding anything said under (a) and (b), the copyright owner of the work must not infringe upon the rights of the third-party copyright owner concerning his technological protection measures, as listed in Sec. 106 of the U.S. Copyright Act. The copyright owner of the work has therefore no right to reproduce the reverse engineered technological protection measures in copies or phonorecords, prepare derivative works based upon them, distribute copies or phonorecords of them to the public by sale or other transfer of ownership, or by rental, lease, or lending, or perform or display them publicly.
In addition, he must not violate the general rules of vicarious or contributory copyright infringement as, for example, contained in *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 125 S.Ct. 2764 (Jun. 27, 2005). *See* also Sec. 1201(c)(2) of the U.S. Copyright Act.

(d) Reverse engineering of technological protection measures for the purpose of removing such measures from the copyright owner's work does not violate these Sec. 106 rights of the third-party copyright owner. In our case, the purpose of the

reverse engineering is the removal, and not the reproduction or distribution of the technological protection measures.

(e) According to general rules, the copyright owner of the work has the right and the authority to use the services of another party to have the technological protection measures removed from his work.

Conclusion

It does not violate Sec. 1201 or any other provision of the U.S. Copyright Act to remove or reverse engineer a third party's copy protection IP from a copyright protected work for the purpose of coming up with a clean file as long as the copyright owner of the copyright protected work gives explicit permission for such removal. A person has therefore the right to remove or reverse engineer the third-party owned copy protection IP, because this person is covered by the authority of the copyright owner of the copyright protected work. An additional authorization for such a removal by the third-party owner of the copy protection IP is not necessary.