Top 10

FreedomWorks Foundation

The Top Ten Reasons Why Hollywood's Attack on RealDVD Is Wrong

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Last fall, Seattle-based RealNetworks released RealDVD, software that allows users to legally save a copy of any DVD that they own to their computer or laptop for later viewing anywhere or anytime. The motion picture studios—including Disney, Paramount, Sony, Twentieth Century Fox, Warner Bros., and Viacom—have filed a lawsuit against RealNetworks to have the new product banned, which threatens to hamper competition and technological innovation in one of the most dynamic sectors of the economy. The trial begins on April 24th.

1. RealDVD does not remove the content scramble system (CSS) that protects copyrighted material, which ensures that it does not run afoul of Digital Rights Management (DRM) requirements. In addition, a new layer of encryption is added that locks the copy to a single hard drive and eliminates the possibility of making additional copies for distribution, removing the threat of piracy.

2. Consumer rights could be dramatically curtailed or even eliminated if the courts determine that the Digital Millennium Copyright Act (DMCA) trumps the long history of legal decisions that define fair use. If the studios win their legal challenge to RealDVD, the courts, in effect, will be asserting that the DMCA adds significant new restrictions to what consumers are allowed to do with DVDs they have legally purchased.

3. The DMCA has given the content providers a virtual monopoly on platforms for the distribution of their products by requiring all new technologies be licensed by the DVD CCA. But a copyright is a negative right. That is, it is a limitation on others using the creator's work. It does not provide the creator with the right to do something with a copyrighted work, and it certainly should not create a monopoly for the technologies that consumers may purchase.

4. The case against RealDVD is the most recent attempt by content providers to limit competition and technological innovation. New technologies have reduced costs and introduced new models of production and distribution. Rather than adapt, the studios are using litigation to defend old business models.

5. Shifting the burden of content protection to consumers and other technology sectors can have significant impacts and costs for the economy. New restrictions will affect innovation and slow the inevitable transition to a digital economy, which can threaten productivity in one of the most dynamic sectors of the economy.

6. The allegations of increased piracy made by the studios are sweeping and require empirical support before they can be used as a basis for denying consumers the use of a new product.

In fact, there is little evidence that has been provided to demonstrate that RealDVD actually increases piracy and therefore harms the movie studios.

7. The impact is, in fact, just as likely to be neutral or actually beneficial to the movie studios. RealDVD includes a number of features that may, in fact, boost the demand for DVDs, raising a direct challenge to the motion picture studios' assertions that a product like RealDVD detracts from their revenues. Allowing consumers to view their DVDs without having to carry the discs or a drive that plays DVDs increases the value of the DVD, which can increase demand.

8. While attempting to reduce copyright infringements, the DMCA has actually stifled innovation and reduced consumer choice while doing little to stem the flow of piracy. For DVD pirates, the impact of RealDVD will be minimal—it offers little advantage to those seeking to copy DVDs for widespread distribution. Banning a product that maintains the DRM encryption and adds another layer of protection will do little to quell piracy.

9. The studios, in essence, are asserting an exclusive claim not just to the creative content they provide, but to the technologies used by consumers to view DVDs, something that goes far beyond their copyright protection to spur innovation.

10. RealDVD is just the latest target of the Hollywood studios. However, their troubles go well beyond just one product or one market. Quite simply, DVD revenues—which have been a cash cow for the industry—are plummeting. Much like the music industry, the studios are scrambling to deal with new technologies and new consumer preferences. Movie studios must come to grips with the increasing prominence of the internet, a valid and growing competitor to the old model of producing for movie theaters with an aftermarket of televisions.