Digital locks and research libraries: So What?

Sponsored by the Canadian Association of Research Libraries
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Agenda

- Introduction
- What are digital locks?
- The work and findings of the group
- Broader issues for libraries
- Discussion

“This group set out to explore the impact of digital locks in the everyday work of Canadian research library staff. This report of the group’s findings and recommendations can serve as a starting point for libraries as they begin to think about digital locks in a changing copyright environment.”

Members

- Chabriol Colebatch, Brock University
- Josh Dickison, University of New Brunswick
- Mark Swartz, Queen's University
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Image: A sixteenth-century engraving of a print shop

Image: … big computers (CC Licenced on Flickr)

One Answer

Digital Locks?

TPMs?

DRM?

Different terms, but they all represent mechanisms added to digital files in order to control how that file can be accessed and used by the consumer

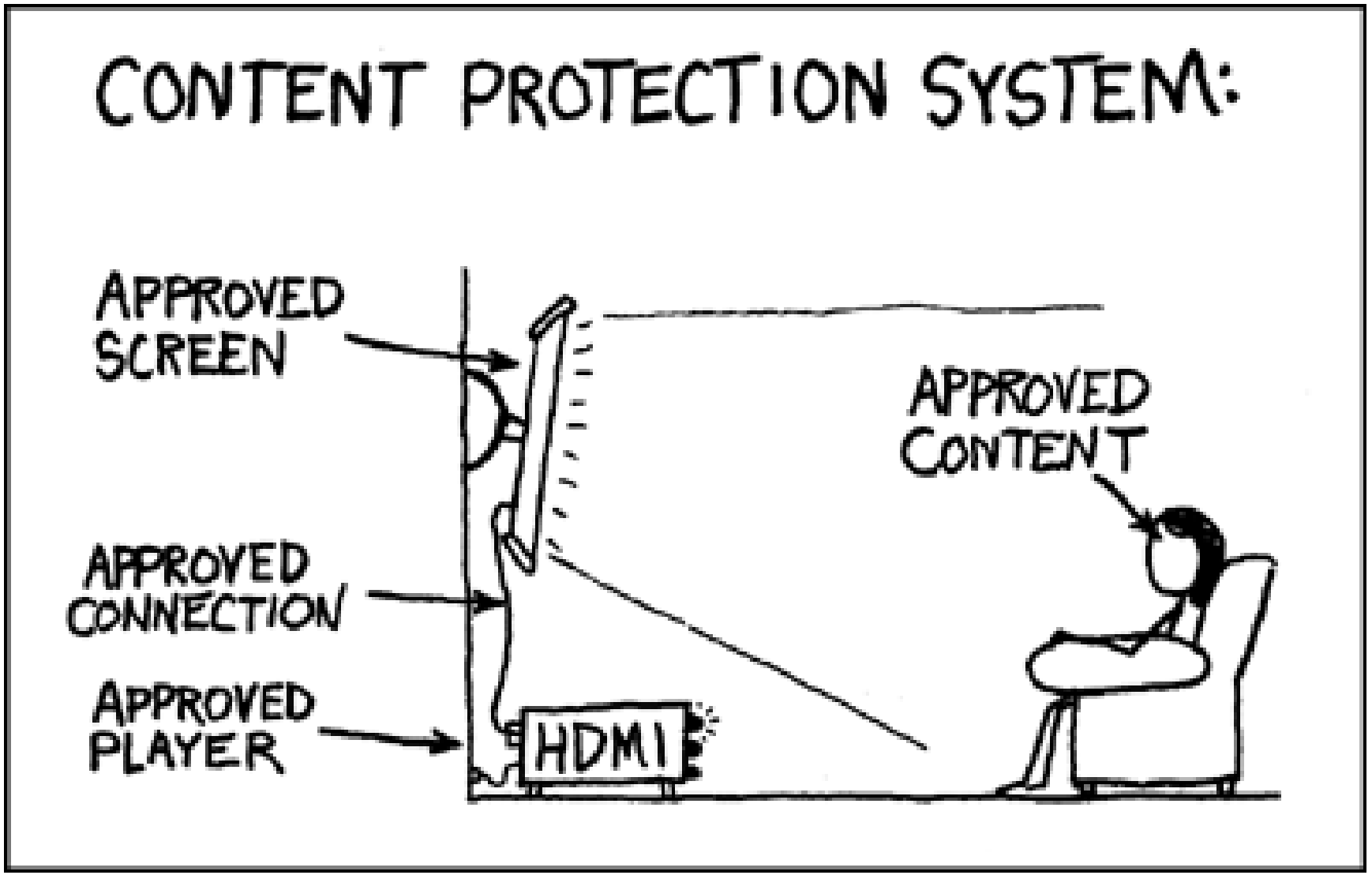
CONTENT PROTECTION SYSTEM:
APPROVED SCREEN
APPROVED CONNECTION
APPROVED PLAYER
HDMI
APPROVED CONTENT

Image: XKCD

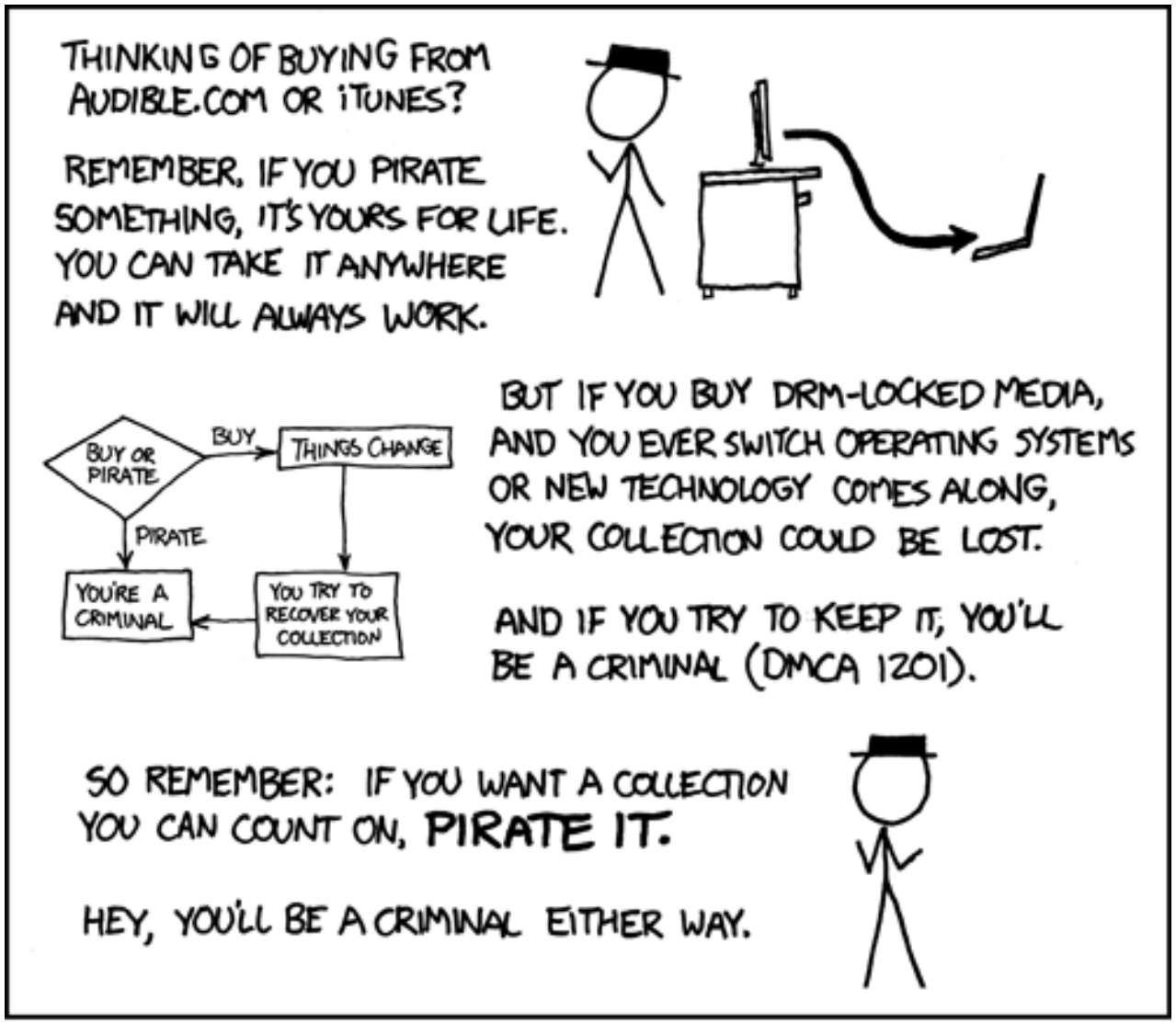
THINKING OF BUYING FROM AUDIBLE.COM OR iTUNES?
REMEMBER, IF YOU PIRATE SOMETHING, IT'S YOURS FOR LIFE. YOU CAN TAKE IT ANYWHERE AND IT WILL ALWAYS WORK.
BUY OR PIRATE
BUY
THINGS CHANGE
PIRATE
YOU'RE A CRIMINAL
YOU TRY TO RECOVER YOUR COLLECTION
BUT IF YOU BUY DRM-LOCKED MEDIA, AND YOU EVER SWITCH OPERATING SYSTEMS OR NEW TECHNOLOGY COMES ALONG, YOUR COLLECTION COULD BE LOST.
AND IF YOU TRY TO KEEP IT, YOU'LL BE A CRIMINAL (DMCA 1201).
SO REMEMBER: IF YOU WANT A COLLECTION YOU CAN COUNT ON, PIRATE IT.
HEY, YOU'LL BE A CRIMINAL EITHER WAY.
(IF YOU DON'T LIKE THIS, DEMAND DRM-FREE FILES)

Image: XKCD

Bill C-11 – The Copyright Modernization Act

- A lot that is good:
  - Education, parody and satire added as an allowable purpose under Fair Dealing
  - Other exceptions will also allow you to create "mash-ups" using copyrighted materials, to time-shift and format-shift licensed consumer content
  - Various specific education and library exceptions added or improved, e.g., the explicit ability to copy material publically available on the Internet in educational settings.

The Bad

Section 41 of Bill C-11 amends the Copyright Act to create legal protections for digital locks that prohibits circumvention for any purpose – even in situations where making copies would be allowed under the Copyright Act.

Section 41 – A Layman's View

- *"technological protection measure"* means any effective technology, device or component that, in the ordinary course of its operation,
- (*a*) ***controls access to a work***, to a performer's performance fixed in a sound recording or to a sound recording and whose use is authorized by the copyright owner; or
- (*b*) ***restricts the doing*** — with respect to a work, to a performer's performance fixed in a sound recording or to a sound recording — ***of any act referred to in section 3, 15 or 18*** and any act for which remuneration is payable under section ***19***.

Section 41

- *"circumvent"* means,
- (*a*) in respect of a technological protection measure within the meaning of paragraph (*a*) of the definition *"technological protection measure"*, to ***descramble*** a scrambled work or ***decrypt*** an encrypted work or to otherwise ***avoid, bypass, remove, deactivate or impair*** the technological protection measure, unless it is done with the authority of the copyright owner; and
- (*b*) in respect of a technological protection measure within the meaning of paragraph (*b*) of the definition *"technological protection measure"*, to ***avoid, bypass, remove, deactivate or impair*** the technological protection measure.

Section 41

- **41.1** (1) No person shall
- (*a*) circumvent a technological protection measure ***within the meaning of paragraph (a) of the definition "technological protection measure"*** in section 41;
- (*b*) offer services to the public or provide services [for any circumvention]
- (*c*) manufacture, import, distribute, offer for sale or rental or provide — including by selling or renting — any technology, device or component [for any circumvention]

Section 41

- 41.1(2): It is the copyright owner who must sue; he/she/it can sue just for the circumvention alone; and this would be as an infringement of copyright.
- 41.1(3): There are no statutory damages for individuals circumventing TPM's for private purposes (i.e., a copyright owner must sue for actual damages)

Section 41

- 41.19: A judge can reduce damages for defendant if the defendant was actually and reasonably unaware of that his/her/its action was illegal.
- 41.2: A library, museum, archives or educational institution is subject only to an injunction in the case of reasonable non-awareness.

Section 41

There are exceptions for:

- Law enforcement and national security
- Interoperability of computer programs
- Encryption research
- Protection of personal information
- Use by persons with perceptual disabilities
- Broadcasting
- To allow a “radio apparatus” use of a telecommunication service (…jail-breaking)
- Note: tools and services for exceptions are legal
- Cabinet can make regulations to compel access to works to those intended to benefit from the exceptions
- Cabinet can make additional exceptions by regulation

Section 41

- Note that while, in the abstract, copy controls are not illegal to circumvent, this may not mean much:
- (a) access controls and copy controls are often intertwined or indistinguishable in practice
- (b) except for excepted purposes, the services and tools for circumvention of any kind are illegal to provide
- (b) digital locks of any type are illegal to circumvent for most of the new consumer exceptions

The experience of libraries

What did we find?

There is uncertainty in the library community in what constitutes a digital lock

Digital locks are not greatly hindering the work of librarians in terms of providing access to and preservation of content

Many librarians would prefer to look for other options rather than break a digital lock

Digital lock restrictions can be a factor in licensing decisions of libraries

Best Practices/Recommendations

- Improve understanding of digital locks in the library and academic community
- Avoid purchasing/licensing content with digital locks that restrict needed uses whenever possible – negotiate needed uses
- Share methods for working around digital locks (but what about “avoiding” them? – e.g., analogue capture)
- Document complaints and concerns (and send to, say, the CLA Copyright Committee).

“By embedding controls in the products, providers can prevent use that is non-infringing under copyright law as well as enforce restrictions that reach far beyond the rights covered in the copyright law.”

First sale/Pay per use models

- First sale doctrine which allows for the secondary transfer of works to other
- The advancement of pay-per-use models of information dissemination

Preservation

- Digital locks can frustrate or prevent preservation efforts
- To preserve and provide access digital content, libraries and archives must be able to copy and migrate it in response to changing technologies

General erosion of fair use/dealing

- Fair dealing becoming more like fair use in the US
- Contract terms basically TRUMP the Copyright Act
- Digital Locks AUTOMATICALLY ENFORCE contracts
- The copyright act MAKES IT ILLEGAL to break digital locks for almost any purpose
- What happens if ALL materials are locked with digital locks?
  - User rights become irrelevant

Solutions and recommendations

- The recommendations in the report are a great first step
  - Spread the word about what these locks might mean for research libraries and universities
  - Support initiatives related to digital locks
  - Learn more about them

Questions?

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