

Detailed Submitter Information

This is a joint submission by eight intellectual property lawyers, all of whom are members of the **Delaware County, Pennsylvania Intellectual Property Forum** (website: www.yarbroughlaw.com/delcoipforum.htm).

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Submission Information

Proposed class or classes of copyrighted works to be exempted:

All classes for audio and audio-visual recordings in digital, compact disc, DVD or download format which contain, install, or activate access control software altering the normal operation of a digital computer or player in any manner interfering with its operating system, firewall, or anti-malware software (antivirus, anti spy ware, antiworm, or similar.)

Brief summary of the arguments in support of the exemption proposed above:

Without the requested exemption users and security experts will not be able to promptly expose, repair, uninstall or prevent computer or player operating system damage caused by improper or malfunctioning access control software whose installation has been required or induced by a content provider.

Detailed Submission

We joint submitters, all members of the Delaware County, Pennsylvania Intellectual Property Forum, are owners and users of copyrighted legal & technical audio and audio-visual recordings, books, reports and periodicals on digital media and also via the internet, primarily as attorneys but also as scholars and researchers.

The operating system of a computer or media player directly controls and manages its hardware and basic system operations, providing a secure foundation upon which to run application software, such as a media player. A software application can effectively control access to copyrighted media, for example by passwords or encryption, without interfering with a computer's or player's operating system or installed security applications (firewall, antivirus, etc.).

In the recent notorious "Sony BMG Music rootkit" incident* more than 500,000 computer networks were infected by Sony's XCP software installed (without providing an Uninstall routine) on Windows computers to control a user's access to Sony CD audio recordings. This access control software fundamentally altered the delicate Microsoft Windows operating system of a user's computer, exposing the computer to malfunction and providing opportunity for malicious attack via the internet by third parties. Such interference with the operating system has been criticized by the Department of Homeland Security and computer security experts world-wide.

Individual users, security experts and authors of anti-malware software need the requested exemption to promptly expose, reverse engineer, circumvent and uninstall any access control software delivered with audio and audio-visual recordings that compromises the operation and/or security of the user's operating system.

*See www.wired.com/news/privacy/0,1848,69601,00.html?tw=wn_4polihead