



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

May 12, 2006

VIA COURIER

OPEN LETTER

The Honourable Maxime Bernier, P.C., M.P.
Minister of Industry
5th Floor, West Tower
C.D. Howe Building
235 Queen Street
Ottawa, Ontario K1A 0H5

The Honourable Bev Oda, P.C., M.P.
Minister of Canadian Heritage
25 Eddy Street
Gatineau, Quebec
K1A 0M5

Dear Minister Bernier and Minister Oda:

Re: The Privacy Implications of DRM and Copyright Reform

While the review and reform of Canadian copyright law is a commendable goal, the proposal to use 'digital rights management' (DRM) technology to enforce such legislation invites negative privacy impacts.

Conceptually, DRM includes not only the technologies that are used to secure digital content from unauthorized distribution or copying, but also the laws, contracts and licenses that impose restrictions on the use of such material.

The definition of informational privacy or data protection has evolved over the last century to include, among other things, the right of individuals to exercise control over their personal information. In this context, the right may be expressed as "informational self-determination." Consequently, privacy protection extends to exerting controls over the collection, use and disclosure of personal information.

Many DRM applications require the collection of some personal information (data collected from the user's operation of the DRM application and the content it provides access to), in order to work effectively. For example, some companies using DRM rely on the technology's capacity to collect personal information and transmit it back to the publisher of the content. They may also use the personal information and other clickstream data as a means to track customers' demographics and usage patterns and, as a result, learn how to market to particular segments of the population more precisely.

I explored the potential threats to privacy arising from DRM in a paper entitled, *Privacy and Digital Rights Management (DRM): An Oxymoron?* (2002). The title speaks for itself. A copy is enclosed, for your information.

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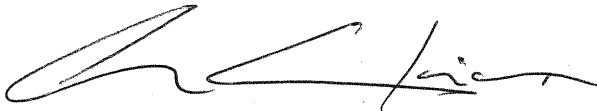
After reviewing the potential impact on privacy, the paper argues that companies using DRM technologies should do so in a manner that does not diminish Canadians' legitimate privacy expectations. Companies using such technologies should refrain from collecting personal information from consumers, or, seek their informed consent before collecting, using or disclosing their personal information. In addition, the paper sets out seven steps for embedding privacy into DRM technologies, and proposes several privacy protective tips for consumers.

A number of groups and organizations from the Canadian privacy community have expressed their concerns over the threats to privacy arising from the use and proposed legal protection of DRM. They are seeking assurances that privacy will be protected in a number of ways. I share their concerns and specifically echo their request to ensure that any proposed copyright reforms must prioritize privacy by including a broad privacy consultation and a detailed privacy impact assessment, in conjunction with the introduction of any copyright reform bill.

I strongly urge you to instruct your staff to take these privacy protective measures to assure the public that the protection of their privacy is indeed a priority for your government.

I look forward to your early response on this very important matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Ann Cavoukian', written in a cursive style.

Ann Cavoukian, Ph.D.
Commissioner

Enclosure

cc: The Honourable Jim Flaherty, Minister of Finance
Jennifer Stoddart, Privacy Commissioner of Canada
Patricia Neri, Director General, Copyright Policy, Dept. of Canadian Heritage
Susan Bincoletto, Director General, Marketplace Framework Policy Branch,
Industry Canada