

DIGITAL RIGHTS MANAGEMENT: THE INDIAN SPECTRUM

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INTRODUCTION

Prevention is better than cure. So goes a timeless wisdom. A reasonable man contends with the problems at hand. However, a wise one is prepared for the problems that he might have to contend with. It is occasion for our legislators to be wise and take note of the storm on the horizon. DRM or Digital Rights Management has long arrived on the technological scenario. DRM can be understood as the techniques utilized by the producers, creators etc. of a digital work to manage or safeguard their rights in the same. As has occurred in the past, the advent of this new technology has not been envisioned by the law framers. Thus various gaping holes in the legal regime allow the right holders in digital content to misuse this technology thereby fostering the demise of various basic rights guaranteed to the citizens of our country.

The controversy surrounding DRM usage brings to the fore existence of a delicate relationship between Copyright and Consumer rights. While it can be contended that DRM is one of the most potent modes of the protection of intellectual property in the digital form, yet it cannot be denied that stringent and excessive DRM techniques prove detrimental to the common and reasonable consumer. The law must therefore instead of making a choice should seek to bring about a compromise between these two competing premises.

The controversy has myriad dimensions. The quantum and mode of damage to our legal rights forms a fundamental issue. Another numbing question is whether we have adequate legal measures to prevent the abuse of DRM and where does a victimized consumer find sanctuary as a result of the same. Again the global nature of the digital content poses a major pitfall while arriving at a solution.

The uninhibited and abusive means of utilizing DRMs is a legal catastrophe waiting to happen.

Slowly yet steadily the difference between what the right holders should or should not

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protect is diminishing at the cost of the rights of the consumers. Hence it is pertinent that due consideration should be bestowed upon the problem by the authorities with a very cautious outlook and a solution be worked out.

DRM: Technology Explained

The precise definition of the term DRM is scarcely possible. However generically put Digital Rights Management (DRM) is a broad term that refers to any technologies and tools which have been specifically developed for managing digital rights or information¹. It is a system that includes technological measures that allow for specific terms of use, what you can and cannot do, and then the ability to monitor that use and to get payment for that use². The term also describes technologies designed to promote and empower consumers to use content in a specific and intended way. More formally DRM systems consist of “*secure packaging and delivery software designed to prevent purchasers and third parties from making unauthorized uses of digital works*”³. In other words, DRM systems provide a means of expressing usage rules, a means of associating those rules with content, and frequently, a means of enforcing these rules by preventing actions that the usage rules do not explicitly permit⁴. DRM systems are software-based tools tailored to control the use of digital files in order to protect the interests of right-holders. DRM technologies can manage file access (number of views, length of views, and ways of viewing), altering, sharing, copying, printing, and saving⁵. These technologies may be included within the operating system, program software, or in the actual hardware of a device. DRM technology can be used to protect both online and offline media⁶.

¹ Digital Rights Management: Technological, Economic, Legal and Political Aspects 597 (Eberhard Becker et al. eds., Springer-Verlag 2003); C.J. Alice Chen & Aaron Burstein, Symposium Comment, The Law & Technology of Digital Rights Management, 18 Berkeley Tech. L.J. 487, 487 (2003).

² Marybeth Peters, Joseph Salvo, Fred Von Lohmann, PANEL II: Licensing in the Digital Age: The Future of Digital Rights Management, 15 Fordham Intell. Prop. Media & Ent. L.J. 1009.

³ Dan L. Burk & Julie E. Cohen, Fair Use Infrastructure for Rights Management, 15 Harv. J. Law & Tech. 41, 48 (2001).

⁴ Barbara L. Fox & Brian A. LaMacchia, Encouraging Recognition of Fair Uses in DRM Systems, Communications of the ACM (Apr. 2003) at 61, 61, available at <http://delivery.acm.org/10.1145/650000/641233/p61-fox.pdf?key1=641233&key2=2926712501&coll=ACM&dl=ACM&CFID=10296420&CFTOKEN=18029193>

⁵ Stefan Bechtold, From Copyright to Information Law - Implications of Digital Rights Management, in Security and Privacy in Digital Rights Management: ACM CCS-8 Workshop DRM 2001 213, 214-15 (revised papers, Springer-Verlag 2002), available at <http://www.jura.uni-tuebingen.de/bechtold/pub/2002/DRM Information Law.pdf>

⁶ Stefan Bechtold, Digital Rights Management in the United States and Europe, 52 Am. J. Comp. L. 323, 324 (2004).

DRM, Copyright and Social Interests: An Entangled Triangle

Digital Rights Management, Copyright and Public Interest share an intricate relationship. The right holders utilize DRM techniques to protect their rights in the digital content. Trouble begins when the holders of copyrights start using the Digital Rights Management techniques to not just protect their intellectual property in the digital work to the legally permissible extent but to mandate as to what the users or the consumers of the digital content may or may not be able to do. This cripples the rights of the users and creates whimsical barricades around the digital content, which the law has neither prescribed nor imagined. Hence the use of DRM technology precariously swings between protection of the copyright and abrogation of consumer rights.

The merits of DRM: Throughout its history, copyright law has always evolved in response to disruptive technological changes. In recent years, the Internet and other digital communication technologies have once again begun to challenge the scope and justification of copyright law. Unlike earlier challenges, it is extremely difficult to take legal action against copyright infringers in communication networks⁷. The advent of file sharing networks such as the former Napster system, Gnutella, KaZaA, and Morpheus has brought intellectual property from all over the world to everyone's computer at a negligible cost. Accordingly, the recording industry has accused such networks of enabling mass-scale piracy and severely hampering revenue opportunities for content industries⁸. In contrast digital technologies also offer many tools through which digital content may be securely distributed under the auspices of its respective rights holders. Indeed, as a now popular slogan aptly states, the answer to the machine may lie in the machine⁹. Digital Rights Management (DRM) promises to offer a secure framework for distributing digital content, be it music, video, works in writing or even raw data. Thus by restricting unauthorized use of the digital content DRM ensures that content providers - in particular copyright owners - receive adequate remuneration for the creation of the content that is distributed over the DRM system¹⁰. DRM promises an

⁷ Lawrence Lessig, *Code and Other Laws of Cyberspace*, 125 (1999).

⁸ *A&M Records v. Napster*, 239 F.3d 1004 (9th Cir. 2001), remanded to 2001 WL 227083 (N.D. Cal. 2001), *aff'd*, 284 F.3d 1091 (9th Cir. 2002).

⁹ Charles Clark, *The Answer To the Machine Is In the Machine*, in *The Future of Copyright in a Digital Environment* 139 (P. Bernt Hugenholtz ed., 1999); Stuart Haber et al., *If Piracy is the Problem, is DRM the Answer?*, in *Digital Rights Management - Technological, Economic, Legal and Political Aspects* 224 (Eberhard Becker et al. eds., 2003).

¹⁰ Frank Hartung & Friedhelm Ramme, *Digital Rights Management and Watermarking of Multimedia Content for M-Commerce Applications*, 38 (11) *IEEE Communications Magazine* 78, 79 (Nov. 2000); Franco Bartolini et al., *Electronic Copyright Management Systems: Requirements, Players and Technologies*, in *Proceedings of the Tenth International Workshop on Database and Expert Systems Applications (DEXA 1999)* 896 (1999).

unprecedented degree of control over the entire distribution chain and the usage of digital content.

Misuse and abuse of digital rights management: Although the various factors, as discussed above, advocate the use of this new technology, yet the use of DRMs has made the users wary all over the globe. This is because uncontrolled use of DRMs innocuously but cacophonically grazes against various basic rights guaranteed to the society. The threats posed by DRM techniques can broadly be classified in the following manner.

- a) **Unfair Contractual Terms:** An important question is whether consumers are at all aware that DRM systems are applied when buying and consuming DRM-protected products. The combination of contract with technological protection measures could represent a powerful mixture for a fully automated system of secure distribution, rights management, monitoring, and payment for protected content. So, when users access content protected by a technological protection measure, the content provider, in practice, imposes a contractual provision. In particular, in the online media marketplace, digital rights management systems can operate in combination with contracts and can be essentially used to enforce contractual conditions. A DRM-enforced contract is often realized on unfairness in the process of contract formation and on unfairness in the “invisible” contract terms connected with the use of technological protection measures¹¹. Whereas “visible” terms are immediately valuable by consumers, “invisible” terms and conditions are not only terms that cannot be readily comprehended, but in this case they are also terms implemented without providing consumers notice of the possible limitations of the copy-protected content¹². In few words, the restrictions imposed by technological measures are frequently unclear to consumers. This lack of information can induce consumers to make buying decisions which they would not have made had they been better informed. Thus, DRM can also be seen as the imposition of “unilaterally defined contractual terms and conditions.”¹³
- b) **Exceptions to Copyright:** The Use of DRM technology to safeguard content is a blanket ban on various activities; it disallows everything that is not explicitly permitted by the content providers. While such a policy may prohibit infringement of copyright the indiscriminating nature of such a restriction poses a problem for

¹¹ Nicola Lucchi, Countering the Unfair Play of DRM Technologies, 16 *Tex. Intell. Prop. L.J.* 91.

¹² *Ibid.*

¹³ Jacques de Werra, Moving Beyond the Conflict Between Freedom of Contract and Copyright Policies: In Search of a New Global Policy for On-Line Information Licensing Transactions: A Comparative Analysis Between U.S. Law and European Law, 25 *Colum. J.L. & Arts* 239, 244 (2003).

those who intend to carry out legitimate activities. Normally consumers have some privileges granted under copyright law regime¹⁴. Copyright law allows certain exceptions whereby users can use copyright works freely without rights holder authorization. Both common law and civil law countries have more or less several exceptions in common such as educational and scientific purposes, citation, parody, and private copying. Generally these exceptions allow consumers to make copies or utilize copyrighted material in some circumstances. Problems come out when a technological protection measure is in place because it eliminates these fair use rights or copyright exceptions. Given that the circumvention of these measures is strictly prohibited or not possible to achieve in most cases, the beneficiary of a copyright exception on a technologically protected content would have no possibility to benefit from these exceptions without exposing themselves to sanctions. Hence what transpires is that the use of DRM effectually implements a ban on the legitimate uses of the digital content. Few States have implemented effective rules to protect the interest of consumers of digital content¹⁵. Thus often by not providing for the legitimate exceptions while using DRM measures the content providers violate not just copyright law but also consumer rights.

- c) **Privacy Issues:** The privacy issue of DRM systems is one of the most intensely discussed concerns in public debates; in particular the concern is raised by cyber rights advocates or citizens' representatives. The loss of individual privacy is one of the interests that some commentators perceive DRM to threaten. In respect of online services in particular DRM is sometimes used to collect information about the user. The data can be used for checking adherence to the usage license. It is also sometimes used for internal marketing purposes, in other cases it is passed on or even sold to third parties. Occasionally, CDs and DVDs can also use DRM to monitor consumer behavior. One inglorious example was the so called XCP-DRM system used by Sony-BMG: if you wanted to listen to the CD on your computer, you first of all had to install software that allowed Sony-BMG to track when you listen to the CD, for how long, etc. This information was then sent to Sony BMG via the internet. Such procuring and utilization of personal information amounts to nothing more than an invasion of user's privacy.
- d) **Interoperability:** Interoperability is a major consumer concern while dealing with DRM measures. Whether or not content is accessible also depends on whether the consumer's hardware supports certain DRM standards A classic example is

¹⁴ Ibid.

¹⁵ Urs Gasser & Michael Girsberger, *Transposing the Copyright Directive: Legal Protection of Technological Measures in E.U.-Member States*, Berkman Ctr. Internet & Soc'y, Nov. 2004, <http://cyber.law.harvard.edu/media/files/eucd.pdf>.

Apple's iPod, which only supports Apple's DRM standard. iPod owners cannot play music files that are encrypted using any other DRM standard. Real Media Player Files may not be played on other Media devices. Interoperability is also a matter of competition between the content of different providers, and therefore indirectly one of pluralism and diversity. If proprietary software or hardware prevents users from receiving certain content, particularly competitors' content, it harms the latter's competitiveness and the consumer's freedom of choice. For example, the High Level Group on Digital Rights Management, a group of experts set up especially by the European Commission, has specifically highlighted the significance of the problem of interoperability in the DRM sector¹⁶. Thus the ultimate loss is to the ease and comfort of the user.

- e) **Special Users:** Another important aspect of DRM is the situation of users with special needs. These include older people or children, who find it difficult to use complicated services or devices, and users with restricted vision or hearing, or with motor or learning difficulties. One of the main worries here is the accessibility of content in a suitable format or the ability to manipulate content in order to make it accessible and compatible with the needs of particular population groups¹⁷. Even if one wants to convert the digital content in a form that such special users may use, the DRMs often prevent such conversion. The focal problem remains that DRM techniques allow only a certain mode of use and every other mode of use, whether it may be necessary or even legitimate is not permitted.
- f) **Security Concerns:** Security issues of DRM systems are relatively seldom raised. Yet security issues for consumers may for instance arise when DRM systems are in conflict with other software installed on the computer or other devices such as iPods, media players etc. Further since most DRM systems need an Internet connection, e.g. for registration, they are relatively open for external attacks, but can be hardly controlled by consumers in this respect. Therefore the often unaware consumer is placed in a precarious place by the use of DRM measures.

These are some of the methods in which the use of DRM techniques hampers the rights of the consumers.

¹⁶ High Level Group on Digital Rights Management, Final Report, pp. 5 *et seq.*, available at: http://europa.eu.int/information_society/europe/2005/all_about/digital_rights_man/doc/040709_hlg_drm_final_report.doc

¹⁷ Disabled People International 2004, point 4; World Blind Union 2003; World Wide Web Consortium 2004 (Web Content Accessibility Guidelines Working Group (WCAG WG)); ENABLED 2005.

The Law and DRM

One of the principal reasons which facilitate the misuse of DRM measures is the fact that there is hardly any legislation, either at the international level or the national level, which regulates as to how this technology is to be used.

At the global stage The WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonographs Treaty (WPPT) adopted in 1996, together called the WIPO Internet Treaties, lay the foundation stone of the protection of copyright in various intellectual properties. Although neither of these treaties either empower or prohibit the right holders to use measures to protect their intellectual property, however an implicit approval is found within the provisions of these international instruments regarding the usage of DRM techniques. Articles 11, 12 of WCT and 18, 19 of WPPT relate to Technical Protection Measures (TPMs) and Rights Management Information (RMI).¹⁸ Article 11 of the WCT requires nation's party to the treaties to enact laws against DRM circumvention. It provides that the contracting parties must provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty or the Berne Convention, which is also treaty for the protection of copyright of authors.¹⁹ Further Article 12 provided legal remedies against alteration or removal of right management information (RMI) by stating that the contracting parties shall provide adequate and effective legal remedies against any person who knowingly performs any act, or has reasonable grounds to know that the performance of any acts will induce, enable, facilitate or conceal an infringement of any technological measure. However, the treaties, in order to strike a balance between the rights of the copyright owners and licensees and the larger public interest i.e., particularly education, research and access to Information,²⁰ introduced the limitations and exceptions provision²¹ in which is embedded the three-step-test provision of Berne Convention.²²

¹⁸ DRM systems cover a range of technologies with different purposes such as: Systems to identify owners rights and give information on licensing , e.g. to enable collecting societies to accurately pay royalties, called as the Rights management Information (RMI) and Copy protection systems to prevent unauthorised coping, e.g. may prevent consumers from transferring films stored on DVD to a computer hard drive called as the Technical Protection Measures (TPM). See < <http://www.ipso.gov.uk/types/copy/c-other/c-protect.htm>>, Last Visited November 12, 2009.

¹⁹ See Article 11, WIPO Copyright Treaty, 1996 (*Entry into force*: March 6, 2002), available at <http://www.wipo.int/treaties/en/ip/wct/trtdocs_wo033.html#P8_189>, <Last Visited 25th November 2009>.

²⁰ Paragraph 5th of the Preamble of WCT.

²¹ Article 10 of WCT.

²² Jorg & Lewinski, p. The limitations and exceptions are allowed in the national legislations so long as these limitations and exceptions meet the three step test, i.e., 1) they are for certain special cases, 2) does not conflict with a normal exploitation of the work and 3) does not unreasonably prejudice the legitimate interests of the authors under the treaties.

Under the Indian Copyright Statute²³ copyright is a “*bundle of rights*”. From a plain and strict reading of the provisions, more specifically, section 14 (1) (a) (which deals with the meaning of copyright in the case of a literary, dramatic or musical work)²⁴ no authority is bestowed upon the author/owner of any right by the virtue of which he may dictate how his work may be utilized. The Indian law merely defines the various rights that the author has over his intellectual work and provides the remedies that the author may avail of in case of the infringement of the rights given. However the law does not provide that the author may create barricades to protect his work or create various restrictions around the same. It is to be noted that under Section 52 of the Indian Copyright Act, 1957 numerous instances are provided which would not amount to an infringement of the author’s copyright in his work. However, these exceptions can only be pleaded by a defendant in case he is sued for an infringement. These exceptions, which have their roots in public interest, have no enforcement mechanism under the copyright regime because they are not rights. In case of DRM there is an abrogation of public interest and free usage via the exploitation of the rights of users but the user is helpless and has no remedy against the owner even if the DRM technology immunizes the owner’s work from any of the actions which are legally permissible under section 52, thereby rendering the provision virtually useless, the customer has no cause of action because these exceptions are not a rights and cannot be enforced.

Not only can digital works, under contention, be regarded as literary works under the copyright act, they may also be categorized as goods under the Indian law when they are the subject of a sale²⁵. The Indian Supreme Court has held that the term “goods” comprises all types of movable properties, whether those properties are tangible or intangible, including computer software.²⁶ The Sale of Goods Act, 1930 provides that a contract of sale should be both absolute and unconditional. However, this section must be read with provisions of the Indian Contract Act, 1872. Section 20 of the Contract Act enumerates that there should be no ‘mistake’ as to the fact regarding quality of the goods which are the subject of sale. The terms and conditions of the contract rarely highlights whether the software or other digital work being purchased is riddled with DRM measures or not. As discussed above the purchasers are seldom aware of the presence of the DRM techniques in the product, which materially alters the buyer’s perception as to the quality and utility of the goods in question. Thus there is no meeting of minds or *consensus ad idem* and hence such a sale would be in violation of the essentials of a valid sale cataloged under Indian law. The Indian Contract Act and the Sale of

²³ The Copyright Act, 1957.

²⁴ It may be noted that a literary work includes a computer programme by the virtue of section 2 (o) of The Copyright Act, 1957.

²⁵ section 2(7), Sale of Goods Act,1930.

²⁶ *Tata Consultancy Services v. State of Andhra Pradesh*, AIR 2005 SC 371.

Goods Act do not envisage such technologies such as DRM. Though the courts have extended these acts to software agreements, however the courts seem to be in oblivion as to how through technologies such as the DRM, the owners abuse the limitations in the law.

Various digital works are transacted with the use of a standard form of contract. A valid contract requires offer and acceptance. It is of essence that such an acceptance must be a valid acceptance, that is to say, an acceptance made, fully conscious of and alive to the terms and conditions of the proposal. Section 2(b) of the Indian Contract Act, 1872 requires that the acceptor must have a real opportunity to review the proposal and decide on whether to accept it or not. Under our legal system, Section 23 of the Contract Act deals with the issue of when contracts may be struck down. The said section also deals with agreements, which are immoral or opposed to public policy. The Supreme Court has held that an unfair or an unreasonable standard contract entered into between parties of unequal bargaining power would be void as unconscionable, under Section 23 of the Act.²⁷ The Indian courts have relieved the weaker party to a contract from unconscionable, oppressive, unfair, unjust and unconstitutional obligations in a standard form contract.²⁸

Moreover the mode in which DRM is used may also culminate in the invasion of the privacy of an individual. Although, there is no law in India which expressly recognizes the right to privacy, however, the Supreme Court has recognized that there is a right of privacy implicit under Article 21 of the Constitution of India, which deals with the individual's fundamental right to life.²⁹ Often, as highlighted above, the use of DRM conflicts with the right to privacy of the consumer. Therefore, the use of DRM can also be perceived as a violation of the right to privacy of an individual.

Thus the use of DRM by the authors and producers of digital content in relation to their work may not said to be harmonious to the law. Hence it is needed that the issues being raised by the continued use of DRM in our country should be understood and a solution be worked out.

The Way Out

As discussed above the status quo offers a plethora of opportunities for the misuse and

²⁷ *Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly*, (1986) IILLJ 171 SC.

²⁸ *L.I.C. of India v. Consumer Education and Research Centre*, AIR 1995 SC 1811.

²⁹ *Kharak Singh v. State of U.P.*, 1 SCR 332 (1964) and *Collector v. Canara Bank*, AIR 2005 SC 186. Also see R.C. Jain, National Human Rights Commission, India, Indian Supreme Court on Right to Privacy, July 1997.

abuse of DRM Techniques. The DRM measures used today go beyond the mere protection of the copyright of the content provider. Moreover the mode in which the copyright is being protected can be labeled as unjust to the legitimate concerns of the public at large. At the receiving end, the consumers are at sea to find remedies against the denial of their consumer rights. Thus it can safely be said that it is time that the legislators took note of the unconscionable use of DRM methods as described above. Much is to be done. In their quest to prevent the further exploitation of consumer via DRM measures, it is submitted, that the following suggestions may be duly considered:

- First and foremost it is imperative that a balance is struck between the protection of the copyright and the rights of the consumers. The dynamics of such a relationship cannot be left in the hands of the content providers; else we risk the creation of unfair bargaining power in the particular market. Hence laws should be made in order to govern this relationship.
- The DRM techniques should only be utilized in a manner that allows the genuine exceptions to copyrights. The exceptions are provided to ensure there is a balance between the right of the author to exploit his work and the right of the society to have access to information so that the progress of the society is not hampered. Thus the usage of copyright work which is allowed as exceptions to the infringement of copyrights should not be allowed to be done away with; else there is a risk of the creation of a peculiar monopoly not envisaged by the copyright law. However, every country has its distinct copyright code and what amounts to an exception to infringement may vary from one nation to the other. Further it is almost impossible for the DRM System (software that implements the restrictions on use) to distinguish between a legitimate user, such one who uses the digital content within the exceptions to the copyright regime, and an illegitimate user, such as one who attempts to infringe the copyright. Thus provisions allowing for exceptions within the software shall be practically impossible. On the basis of the above consideration it is suggested that a provision be made whereby a user could register with the content provider by stating his objective and by furnishing other relevant details (such as how many copies are to be required, etc.). The content provider could then, after ascertaining whether the said objective falls within the ambit of the copyright exceptions or not, allow the consumer to use the digital content in the desired manner. Such a registration would not only function as a record but would also serve as a contract between the content provider and the end-user in case of any breach. If the suggestion is considered then the content providers shall generally be able to restrict infringement of their copyright and also be able to cater to the exceptions to the infringement of copyrights.
- It goes without question that the terms related to the presence of DRM technology,

which are incorporated in a standard form of contract, and the nature of the same should be mandatorily made known to the consumers. Most software programs are subject to End User License Agreements (EULAs), and the common consumers' attitude towards EULAs is to agree without reading them³⁰. Consumers must know what they can do with their digital hardware and content as well as the limit of their usage³¹. "Consumer contracts governing the use of digital material" need to be "fair and transparent"³². "Rights and duties have always lain at the heart of consumer politics"³³. The content providers can discharge their burden by ensuring that all possible steps are taken to bring the presence of DRMs and its nature in the purchase to the notice of the consumer. During online transactions the same could be done by strategically highlighting the terms in the contract. Further the nature of the DRM should be disclosed in the product description itself. On the other hand it should be made a legal duty of the seller to point out the presence and the nature of DRM technology to the consumer at the time of purchase.

- The above mentioned measure can have a twofold benefit. Firstly and at the very least, the consumers shall be able to make an informed choice which they might not have been able to make earlier. There is little doubt that disclosure and transparency are effective means of protecting their rights and interests, especially in cases of information asymmetry³⁴. Secondly, if followed it shall go a long way in diluting the Security concerns of the consumers. As explained above the principal reason for the security concerns is that the consumers do not know the nature of the DRM Technology and whether the same shall be in contradiction to the already installed software on their computers. If the consumers are duly made aware of the same the security problems concerned with DRM measures shall automatically be taken care of.

³⁰ Cf. Annalee Newitz, *Dangerous Terms: A User Guide to EULAs*, Electronic Frontier Found., Feb. 2005, <http://www.eff.org/wp/dangerous-terms-users-guide-eulas>.

³¹ Consumers Digital Rights Campaign, <http://www.consumersdigitalrights.org/> (last visited Oct. 20, 2007).

³² Bureau European des Unions Des Consommateurs, *Digital Rights Management* [BEUC/X/025/2004] (Sept. 15, 2004), <http://docshare.beuc.org/Common/GetFile.asp?PortalSource=507&DocID=6188&mfd=off&pdoc=1>

³³ Matthew Hilton, *The Duties of Citizens, the Rights of Consumers*, 15 *Consumer Pol'y Rev.*, Jan 1, 2005, at 6

³⁴ Howard Beales, Richard Craswell, & Steven Salop, *Information Remedies for Consumer Protection*, 71 *Am. Econ. Rev. (Special Issue)* 410, 411-413 (May 1981); Edward Rubin, *The Internet, Consumer Protection and Practical Knowledge*, in *Consumer Protection in the Age of the "Information Economy"* 35, 38 (Jane K. Winn ed., 2006); Howard Beales, Richard Craswell, & Steven C. Salop, *The Efficient Regulation of Consumer Information*, 24 *J.L. & Econ.* 491, 513 (1981).

- The consumer concern of interoperability can be dealt with only by the content providers themselves. The problem can be addressed by working towards a standard which can be used to allow the different forms of digital content to be used on most of the hardware devices. Consumers generally welcome standards: they are spared having to pick a winner and face the risk of being stranded. They can enjoy the greatest network externalities in a single network or in networks that seamlessly interconnect. They can mix and match components to suit their tastes. And they are far less likely to become locked into a single vendor, unless a strong leader retains control over the technology or wrests control in the future through proprietary extensions or intellectual property rights³⁵. More ease in use of the product shall help in increasing the profitability of the content provider as well.
- Although some modifications in the current usage practices and the laws might go a long way in addressing the above mentioned consumer concerns, the same cannot be said of the invasion of the privacy of the consumers. The privacy of an individual forms one of the basic human rights and fundamental rights of any individual³⁶. The same should not be allowed to be breached at any cost. Such violations of the privacy of the consumer by the use of DRM methods should be harshly dealt with, either by criminalizing it or by imposing fines on such practices.

It is sincerely hoped that the above mentioned suggestions will go a long way in improving the current scenario.

CONCLUSION

It cannot be denied that DRM is a novel and an advanced mode of protection of the copyright of the content providers. However, as it has been analyzed, the introduction of DRM in India has been a cause of wariness. The new technological measures such as DRMs are not guaranteed to seek remedy against piracy.³⁷ At the cost of this uncertainty, it is the interest of the consumer and the society at large which stands at stake.³⁸ As explained above, the use of DRM techniques by the content providers are cacophonically

³⁵ Carl Shapiro & Hal R. Varian, *Information Rules: A Strategic Guide to the Network Economy* 233 (1999).

³⁶ Article 21, *The Constitution of India*, 1950.

³⁷ Stuart Haber, bill Horne, Jo Pato, Tomas Sander, Robert Endre Tarjan, *If Piracy is the problem, Is DRM the Answer?*, *Digital Rights Management, Technological, Economic, Legal and Political Aspects*, Springer Berlin / Heidelberg, p.224.

³⁸ Stefan Bechtold, *From Copyright to Information Law-Implications of Digital Rights Management, Security and Privacy in Digital Rights Management*, Springer, 2002, p.213-232 at 230.

grazing against the touchstone of public utility. Such an unregulated use of this technology should not be permitted. What is heartening is that the situation is not beyond remedy. With a smart and concentrated effort the two contradictory rights, that of the consumers and those of the copyright holders can be well balanced and harmonized.

Not only should the national legislators wake up and understand the task at hand but also it would be prudent that a very cautious approach be adopted by making an impact assessment of such a technology in the Indian scenario.