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Submission No. 11
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BY:danny-yeo.txt
Committee Secretary
House of Representatives Standing Committee on
Legal and Constitutional Affairs

Dear secretary,

I wish to request an exemption for
Compilations consisting of lists of websites blocked by
censorware ("filtering software") applications.

This was one of the four exemptions granted by the Library of Congress.

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<http://www.copyright.gov/1201/docs/fedreg-notice-final.pdf> (page 8)
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Based on the Register's review of the record, the case has
been made for exemptions of the following four classes of
copyrighted works.

1. Compilations consisting of lists of Internet locations
blocked by commercially marketed filtering software
applications that are intended to prevent access to domains,
websites or portions of websites, but not including lists
of Internet locations blocked by software applications that
operate exclusively to protect against damage to a computer
or computer network or lists of Internet locations blocked
by software applications that operate exclusively to prevent
receipt of email. For purposes of this exemption, "Internet
locations" are defined to include "domains, uniform resource
locators (URLs), numeric IP addresses or any combination
thereof."

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This exemption would fall under the "use of databases by researchers"
and potentially under "activities of open source software developers".

As background to understanding this exemption, I recommend the submission
to the Library of Congress inquiry by Seth Finkelstein, available at
<http://www.sethf.com/anticensoftware/legal/dmccacom.php>
with the permission of the author, I append an excerpt from that submission.

Yours sincerely,

Danny Yee

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An extract from a submission by Seth Finkelstein to the Library of Congress
<http://www.sethf.com/anticensoftware/legal/dmccacom.php>
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| First, a proponent must identify the technological measure that is the
| ultimate source of the alleged problem, and the technological measure
| must effectively control access to a copyrighted work.

The "technological measure that is the ultimate source of the alleged
problem" here, is the encryption or scrambling which serves to keep
secret the censorware blacklists. The encryption or scrambling
effectively control access to the blacklists of websites blocked by
censorware ("filtering software") applications, by requiring in the
ordinary course of the censorware program's operation, a decryption
process in order to gain access to the censorware blacklist.

The basic operation of censorware was described by the district court in
the CIPA decision.

[Censorware] programs function in a fairly simple way. When
an Internet user requests access to a certain web site or
page, either by entering a domain name or IP address into
a web browser, or by clicking on a link, the [censorware]

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checks that domain name or IP address against a previously compiled "control list" that may contain up to hundreds of thousands of URLs. The three companies deposed in this case have control lists containing between 200,000 and 600,000 URLs. These lists determine which URLs will be blocked.

These extensive blacklists are transmitted from the censorware company in an encrypted or scrambled format and stored on the receiving machines. The censorware program itself loads the blacklist from an encrypted or scrambled file, and then uses the blacklist internally for the checking process described above. In virtually all commercial censorware programs, the blacklist is considered proprietary information and is never viewable by the user

| Second, a proponent must specifically explain what noninfringing activity the prohibition on circumvention is preventing

The prohibition on circumvention prevents a wide range of noninfringing fair-use activities in criticism, comment, news reporting, teaching, about the contents of the censorware blacklists.

Note this is not an assertion that every possible criticism, comment, news reporting, teaching, about the contents of the censorware blacklists is prevented. There certainly are some such activities which are not affected by the prohibition. However, as will be detailed extensively below, many investigations are inhibited, and at least one investigator (me!) has been chilled at times.

As I explain in more detail later, while it's possible to test some sites without examining the decrypted blacklist, investigating other aspects of the blacklist, such as finding secret categories, require the blacklist plaintext.

In order to illustrate specific noninfringing, fair-use activity, let me recount some examples of criticism, comment, news reporting, teaching, about the contents of the censorware blacklists which were particularly related to decryption of these blacklists.

News reporting : In 1996, I was the then-anonymous source behind the very first expose of what censorware in fact truly banned, the Cyberwire Dispatch "keys to the kingdom" .

Teaching: In 1997, I coFounded Censorware Project, and was the source for the decryption-based reports on various products (I'm no longer a member of Censorware Project, ironically stemming at heart from problems of legal risk mostly due to the DMCA).

Criticism: To quote attorney James Tyre's account, discussing the library censorware case of Mainstream Loudoun v. Loudoun County Library :

I have mentioned the lawsuit against the Loudoun County Public Library, and the filing of that lawsuit itself, let alone the favorable result is, in many ways, perhaps the most tangible evidence of Seth's good works. In September 1997, in direct response to a plea for help from a member of Mainstream Loudoun, the group which would become the Plaintiff in the lawsuit, Seth decrypted X-Stop, the censorware which the Loudoun County Library was about to commence using. He and I analyzed the results, found a plethora of "bad" blocks, and Jonathan Wallace of The Ethical Spectacle (who also became a founder of CWP) wrote a devastating article, "The X-Stop Files", about the results. The article is on the Net at
<http://www.spectacle.org/cs/xstop.html>

Once the lawsuit was filed, we (by then, CWP had been formed) continued to feed new evidence of bad blocks to the attorneys

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handling the case, all of that evidence coming from Seth's repeated decrypts of updates of the X-Stop blacklist. I cannot know for certain if the lawsuit ever would have been filed in the absence of Seth's decryption of X-Stop, or if it would have been won in the absence of the continuing work, but I do know how appreciative those on the inside were of these efforts.

Note also the EFF Statement -- Dec. 22, 2000 on mandatory library censorware :

Seth Finkelstein, the programmer principally responsible for the investigation of X-Stop filtering software and its flaws, vital to the landmark Mainstream Loudoun victory,
...

Comment: In 2001, my extensive decryption work was finally recognized and honored by my winning an EFF Pioneer Award :

Seth Finkelstein - Anti-censorship activist and programmer Seth Finkelstein spent hundreds of unpaid and uncredited hours over several years to decrypt and expose to public scrutiny the secret contents of the most popular censorware blacklists. Seth has been active in raising the level of public awareness about the dangers that Internet content blocking software and rating/labeling schemes pose to freedom of communication. His work has armed many with information of great assistance in the fight against government mandated use of these systems.

All of the above noninfringing activity would have been prevented by a prohibition on circumvention to access censorware blacklists. The passage of the DMCA in 1998 in fact put a halt to the work described above. Granted, although section 1201(a)(1) did not go into effect immediately, the complexity of the then-new law, and apparent skyrocketing legal risk, made it untenable for me to continue such investigations. It was only after the Library of Congress explicitly granted an exemption that it seemed even possible to continue such decryption-based work.

In the statutory areas discussion below (see (iii) the impact ...), I detail more recent work which would be killed if the censorware exemption is not renewed, as part of the negative impact which would result.
