

# IP for Free !

By Joseph S.Beckman

An Internet Search Engine study found that the two most often used search terms were “free” and “sex”. This month’s article is about free intellectual property (IP). I have some good ideas for next month’s article but I’m making no promises.

A lawyer from my old firm used to deride the pro bono form accompanying the Federal District Court’s dues renewal, noting that marking his area of expertise as “intellectual property” virtually guaranteed he wouldn’t be called on to perform any pro bono work that year. It’s true that not many indigent people have a need for an intellectual property litigator. Nevertheless, I have been working, pro bono, on just such a matter. Even more, I volunteered...and I’m glad I did.

Reading the news on my Palm one night, I noticed a news story on C/Net Technology News about a group of software programmers that were giving up a great project because they were afraid that Microsoft might sue them. The programmers, calling themselves The Neo Project (<http://www.theneoproject.com>), were using Distributed Computing to crack large encryption keys. Distributed Computing uses the idle computer time of individual computers in businesses and homes to work on complex problems by dividing the calculations between the computers. It has been used for a number of years in the SETI Project, an effort to sift through all the intergalactic noise captured by earth radio-antennas for evidence of alien communication. It has been used more recently, and successfully, to crack the encryption keys offered by RSA Security (along with a cash prize), as a test of encryption security. As the keys get larger, the difficulty increases.

The Neo Project was working on the most recent RSA key challenge when they decided to tackle a key not offered up for cracking...the encryption key for the Microsoft X-Box. Of course, for a multitude of reasons, many more people offered to contribute their computers to that project and, as notoriety of the project grew, the team members became more concerned with Microsoft's reaction.

What bothered me the most about the situation was that these programmers were giving up, not because what they were doing was illegal, but because they didn't know whether or not it was illegal. The Digital Millennium Copyright Act (DMCA) makes it illegal to circumvent copy protection schemes. It is intended to give copyright holders some measure of control over the distribution and use of their digital works. It has received ample press in civil and criminal cases involving DeCSS, a program designed to break DVD encryption, enabling a DVD to be copied and played on any computer. It has also led to the arrest of a Russian programmer who cracked the Adobe Ebook encryption scheme to allow an Ebook to be copied from device to device. At least one academic has "voluntarily" withdrawn research results from academic community access under threat of suit. Less celebrated, but ominous, uses of the DMCA include Lexmark's suit to prevent other companies from manufacturing replacement laser printer cartridges that circumvent Lexmark printer software control. Of course, that means the owners of those Lexmark printers are beholden to a Lexmark monopoly for replacement printer cartridges. Do you think they knew that when they purchased those printers? The DMCA also has exemptions. Academic research is one exemption. Reverse engineering to achieve interoperability is another. A third is to identify and disable software designed to collect and transmit personal information. Microsoft has been cryptic about the capabilities of its

online X-Box in this regard. Of course, with the DMCA muscle industries are flexing, any normal programmer would be concerned of the civil and criminal liabilities of their work. And for that reason, a project with great academic promise was to be scuttled.

My involvement didn't require any great effort on my part. All they needed was some qualified advice regarding the legality of their actions. I took the time to educate them a little regarding the law because that's just my style but it really wasn't necessary. With my advice in hand, they went back to work. Hopefully, this work will generate some useful information. The large number of computers involved in the project exceeds previous contributions and has already generated logistic and programming issues to be overcome. In the end, the state of Distributed Computing will hopefully have been advanced. Do I care whether they ever crack that key? Not really...although it would be nice.

Article I, Section 8 of the U.S. Constitution empowers Congress to grant intellectual property protection "to promote the progress of science and useful arts." Recent legislative developments (like the DMCA) have re-opened an ongoing debate suggesting that laws favoring the extension of intellectual property rights serve to hinder creativity and innovation; that they run counter to the purpose of Article I. Regardless, the DMCA is a complicated and, in many areas, untested, law. For that reason alone, it has the capability to dissuade those that "might" cross its path. It's often been said that people ignorant of their rights are those in most need of legal protection. This holds true, even in intellectual property law.

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