

# **Autonomy and Morality in DRM Anti-circumvention Law**

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## **Abstract**

In this paper, we examine the moral propriety of laws endorsing and encouraging the deployment of digital rights management technologies, or DRM. DRM provides self-enforcing technical exclusion from pre-determined uses of informational works; such technical exclusion may supplement or even supplant intellectual property laws that penalize certain unauthorized uses of informational works. The use of DRM has been subsidized by laws prohibiting both disabling of technical controls and assisting others to disable technical controls. To date the public debate over deployment of DRM has been almost entirely dominated by utilitarian arguments regarding the social costs and benefits of this technology. We argue that a deontological analysis, focusing on the autonomy of information users, deserves consideration. DRM shifts the determination of information use from users to producers; users are denied the choice whether to engage in use or misuse of the technically protected work. Adopting a moral framework previously promulgated for justification of criminal punishment, we argue that this shift in determination implicates legal recognition of the individual as an autonomous decision maker. State sponsorship of DRM in effect treats information users as moral incompetents, incapable of deciding the proper use of information products. This treatment of information use can be distinguished from other state sponsorship of technological exclusion, such as the use of locks on physical property, due to the necessity of informational works to human flourishing. This analysis militates in favor of legal penalties that recognize and encourage the exercise of autonomous choice, even by punishment of blameworthy choices, rather than the encouragement of technology that limits the autonomous choices of information users.