October 31, 2002

The Honorable Rick Boucher
2187 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Boucher,

As the Co-Chairs of the USACM, the U.S. Public Policy Committee of the Association for Computing Machinery, we are writing to commend you for your continued efforts to restore a balance in copyright law that preserves fair use and scientific research in the protection of valid copyrights.

In communications with the public, policymakers, and the Courts, USACM has consistently pointed-out that the anticircumvention provisions of the Digital Millennium Copyright Act (DMCA) impede the progress of research in cryptography and other computer security areas by criminalizing multi-use technologies rather than penalizing infringing behavior. Since enactment of the DMCA, some scientists have found it necessary to consult attorneys to determine if their previously legitimate research might be in violation of the Act. In some instances, the threat of legal action under the DMCA has deterred scientists from publishing scholarly work or even publicly discussing their research. Foreign scientists and international members of our association have indicated they will not attend conferences in the U.S. while the DMCA is in force. These examples illustrate how the anticircumvention provisions of the DMCA have produced a chilling effect on U.S. scientific and research enterprise.

During the consideration of the DMCA by Congress and the subsequent rulemaking process, USACM and others in the computing community recommended that the anticircumvention provisions of the legislation be revised to restrict only circumvention directly involved in infringement. We further elucidated other flaws of the Act, including:

* failure to permit circumvention for "fair-use" purposes is inconsistent with the fundamentals of copyright law and deters individuals from conducting bona fide forms of science and technology research that is fundamental to innovation;

* the majority of research in computer security and encryption fall outside of the exemptions to the anticircumvention provisions, including the research and testing of information processing systems and the development of programs that impede the spread of viruses and other kinds of malicious software;

* permitting reverse engineering for the sole purpose of interoperability may criminalize development of software engineering tools and technology with other uses; and,

* anticircumvention exemptions that permit circumvention to obtain authorized access to a work are meaningless if access mechanisms and tools cannot be used to do so.

Unfortunately, our concerns were not satisfactorily addressed as the DMCA was enacted or as the implementation rules were promulgated.

H.R. 5544, the Digital Media Consumers' Rights Act, addresses many of our concerns with the DMCA and restores a balance in copyright law by making a distinction between circumvention for the purpose of obtaining unauthorized access to a work and circumvention for the purpose of making a non-infringing use of a work. For instance, consumers and researchers would be permitted to access hardware and software products that enable non-infringing uses of copy-protected works. Of particular interest to the computing community, H.R. 5544 ensures that technologists would not be penalized for conducting research that is crucial to developing and testing copyright protection systems, security software, and better software engineering tools.

We look forward to working with you to educate policymakers and the public regarding H.R. 5544 and the need for changes to the DMCA. USACM is pleased to offer our technical expertise to assist policymakers in the development of computing and information technology policy. Please contact the ACM Office of Public Policy Office at (202) 478-6312 if we can be of assistance to your efforts.

Sincerely,
Barbara Simons, Ph.D.
Eugene H. Spafford, Ph.D.
Co-Chairs
U.S. ACM Public Policy Committee (USACM)
Association for Computing Machinery