

Dear Sirs,

I am writing with regard to the matter of Lexmark v. Static Control. As you know, an injunction has recently been granted against Static Control, Inc., enjoining them from selling their replacement printer cartridges for Lexmark printers. More specifically, they may not distribute cartridges containing a chip required for interoperability with said printers.

Personally, I find this decision appalling, given its potential implications for hardware and software developers. If this abuse of the DMCA were allowed to stand, it would basically allow any manufacturer to disallow third-party interoperability with their products through the use of a trivial, but copyrightable, component. It is entirely obvious that the sole purpose of Lexmark's addition to their printer cartridges serves the sole purpose of restricting third-party manufacturers -- the chip serves no useful purpose, but its existence is required by the printer.

You may wish to consider for comparison the case of Sega v. Accolade. In a very similar situation, Sega attempted to enjoin Accolade from manufacturing its own cartridges for the Sega "Genesis" game console, using a similar tactic -- each cartridge was required by the console to contain a 512 byte header, without which the device would not boot. The court sided with Accolade, because the header, though copyrightable in its own right, was required for interoperability. This was held in spite of the fact that this header (by Sega's design) caused the erroneous message "Produced by or under license from Sega Enterprises" to appear on the screen!

Many different products now contain digital components, and we can expect that all but the simplest products will do so in the near future. If we are to encourage competition and openness in our economy, rather than fragmentation and monopoly pricing power, we must ensure that laws such as the DMCA cannot be abused to stifle competition.

Sincerely,
Joel Webber