

To: Copyright Office

From: Dean Heusel, Chairman/CEO, Boston Laser Plus, Inc.

Date: 3/6/03

Regarding: Lexmark vs. Static Control Components; Interpretation of DMCA

---

To Whom It May Concern,

The purpose of this letter is to address the issue of copyright protection on the “smart chip” that Lexmark is seeking against Static Control Components under the Digital Millennium Copyright Act (DMCA).

As the owner of a laser printer sales and service company in the Boston area for the past 15 years, I consider myself very knowledgeable on Lexmark printers, and the function of Lexmark’s “smart chip”. Our 50+ employees service thousands of printers, including Lexmarks’.

In my opinion, the smart chip that Lexmark is seeking copyright protection on violates the Sherman Anti-Trust and Lanham Acts. I understand that this is not the issue being addressed by the Copyright Office, but believe it should be considered in your deliberations.

Lexmark’s smart chip is designed specifically to prevent the reuse of their toner cartridges — and require the user to purchase cartridges only from Lexmark. In my opinion, this is illegal restraint of trade under the above mentioned Acts.

In addition, a finding in favor of Lexmark under the DMCA would set a precedent that would ripple through virtually all industries, eliminating competition and user choice in all areas of commerce using consumable parts — from computer diskettes to car fenders.

I believe this is exactly the type of scenario the Sherman Anti-Trust and Lanham Acts were intended to prevent — and the Digital Millennium Copyright Act was *not* intended to protect.

The Digital Millennium Copyright Act, (DMCA) was not intended to prevent the use of repaired toner cartridges in laser printers. I join Static Control in urging the Copyright Office to clearly state that this is the case. However, in an abundance of caution I would also request the Copyright Office exempt from the DMCA the three classes requested by Static Control. These classes are:

1. Computer programs embedded in computer printers and toner cartridges and that control the interoperation and functions of the printer and toner cartridge.

2. Computer programs embedded in a machine or product and which cannot be copied during the ordinary operation or use of the machine or product.
3. Computer programs embedded in a machine or product and that control the operation of a machine or product connected thereto, but that do not otherwise control the performance, display or reproduction of copyrighted works that have an independent economic significance.

These three exemptions will not affect the DMCA's primary goal of preventing people from circumventing encryption for the purpose of copying protected works. It will make clear that the DMCA was not intended to prevent the repair and reuse of hardware nor was it intended to prevent the interoperability of physical devices

In conclusion, I would point out that even the industry leader Hewlett Packard, who also uses "smart chips" in their cartridges, has publicly stated that they believe Lexmark is wrong on this issue.

Thank you for your thoughtful review of this extremely important matter.

Sincerely,

Dean R. Heusel  
Chairman / CEO  
Boston Laser Plus, Inc