



DRM Is Theft: New Yorkers for Fair Use Go to Washington

Industry News (taxonomy/term/22)
by Ruben I Saifir on July 30, 2002

On July 17th, 2002, New Yorkers for Fair Use and NYLXS (New York Linux Scene), with help from the Free Software Foundation, took political action at the Department of Commerce, which was holding its second Digital Rights Management (DRM) Workshop. New Yorkers for Fair Use spearheaded the effort to bring public opinion to the meeting in a reasonable and effective manner. We are happy to announce that all of our goals were met and even exceeded by this action, without disrupting the normal activities of the meeting. It was our goal to have a voice and participate in the democratic process and not to disrupt it entirely.

Prior to the meeting in Washington DC, I, as President of NYLXS and cofounder of NY Fair Use, was attending the Libre Software Meeting in Bordeaux, France, at the request of the French Free Software movement. Upon arriving in France, I checked my e-mail and found a message from Seth Johnson, Secretary of NY Fair Use. His message outlined the Commerce Department's announcement of the workshop, including a list of participants, and asked if NY Fair Use wanted to attend the meeting. The meeting was scheduled to take place the day after I arrived back in New York, about a week from then.

I was reluctant to schedule a trip to Washington DC so soon after arriving home, but the meeting appeared to be too good of a target for the NY Fair use agenda to pass up. It would give us an opportunity to speak face to face with most of our chief opponents, including the likeable and articulate Jack Valenti of the MPAA, the RIAA and several industrial leaders, including Microsoft and Intel. So I told Seth I would go and assigned him the duty of preparing everyone for the trip.

Once the decision was made to go ahead with the plan, several goals were agreed upon by the NY for Fair Use management, including Seth, cofounder Brett Wynkoop, Jay Sulzberger, our general public relations manager, and myself. NYLXS also geared into action by providing network services and funding for the trip. NYLXS members, as usual, sprang into action in support of the NY Fair Use activity. In particular, Micheal Richardson, the NYLXS Membership Chairman and Journal Editor, designed buttons and helped drive everyone down to Washington. Kevin Mark contributed to the PR material. Vinnie alerted as much of the press as possible and Joe Maffia offered technical support. Even with large numbers of NYLXS on vacation, the organization worked admirably according to its charter, to support and educate the public about issues that affect Free Software in business, education and the home.

The first agenda item was to get us representation on the panel, specifically by including myself as a panel representative. Although I was in France and cut off from many of the Washington connections that have nurtured us over the last few years, NY Fair Use was petitioning for a place on the panel from the start. We had Sarah Brown of the EFF in Washington who put Seth Johnson in contact with Chris Israel inside the Commerce Department. Seth Johnson also tried to contact Congressman Weiner's office in an effort to bring some Congressional pressure to the matter. But with the limited time frame and our chief advocate in Europe, we were not able to get representation on the board. Ultimately, NY Fair Use had to fall back on our secondary plan, to participate as members of the audience.

Resigned to being limited to audience participation, we now opened the discussion to a new mailing list created by Seth for the purposes of organizing this action in Washington. The first order of business was to produce proper slogans for our goals. One goal of NYLXS is to change the whole lexicon of the DRM and Copyright discussion. We feel that certain messages need to be brought to the public and the press to assure our future success, not only in this battle over DRM, but also in a wide variety of copyright and fair use issues that have trickled into the public eye over the last few years. We decided, after much discussion and after considering many opinions on the mailing lists, to attempt to drive into the public lexicon the phrases, "DRM is Theft" and "We are the Stakeholders". We carefully chose these expressions to counter the rhetoric coming out of the copyright monopoly content industry, especially the claim by Senator Hollings that he had assembled all the "stakeholders" to write his CBDTPA bill and Jack Valenti's rhetoric that the simple act of listening to a DVD on a GNU/Linux operating system is stealing property from the motion picture industry.

The next stage of planning fell into the lap of Seth Johnson, who mobilized NYLXS and NY Fair Use for the practical matters of making the trip. Fortunately, today NYLXS is a well-oiled machine. We are quite proud of the volunteer spirit of the organization and its ability to deliver when called upon. Joe Maffia found us a minibus for the trip down. Seth Johnson offered use of his credit cards to get the truck. Michael Richardson volunteered to drive everyone to DC. Brett Wynkoop oversaw all the system administrations and coordination duties needed to keep everyone in touch. Jay Sulzberger wrote up a terrific position paper for the trip and a media guide. Vinnie contacted nearly every press contact he could find with information about the trip. Members of every political background came from every part of the city to make the trip. NYLXS has become very effective at organizing events. They are motivated, proactive and competent.

Meanwhile in France, Richard Stallman and I reviewed the political strategy for the action over wine. We agreed to a joint effort of the FSF and NY for Fair Use groups, and we even planned backup



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contingencies, including how to hold a protest outside of the building if we were not allowed into the conference room. One of the ideas we knocked around was showing up with steaks, as in meat, to drive home the message that the public are the stakeholders on copyright monopoly matters. However, time would not allow us to coordinate the efforts. They are still on the table for future political actions.

With Richard and my arrivals home to the States, all the pieces were in place for a successful run at changing the direction of the DRM discussion.

The afternoon I returned to New York, I touched base with Seth and made certain the arrangements for the van were in place and that everyone was clear about the time and place we were to meet. Having picked up the truck, we decided to have one final planning session. Because we were leaving at 4 in the morning to get to DC on time for a meeting with the media at 10AM, everyone assembled rather early in Flatbush. Brett left with his own car from Park Slope in Brooklyn and we stayed in touch on the road. In the minibus we had Michael Richardson, Jay Sultzberger, Seth Johnson, Vinnie, Forrest Mars, Murray, Kevin Marks and myself. Nearly everyone was dressed in a suit and tie.

The drive down to Washington went smoothly, and we met with media guru Eric Hensal at the Corner Bakery in the Press Club building, a few blocks from the Commerce Department Building. Eric gave NY Fair Use great media tips on how to be seen by the press, in addition to a packet with vital press contacts both in the building and across town.

Forrest Mars ran our Media Alert through the building, while Richard Stallman met with us at the bakery with copies of the flyers. Richard and I had spent most of the night dotting polishing the press release by phone and e-mail. Vinnie ran off more copies. Brett and Kevin ran down to the Commerce Department Building to scout out the conditions. As it turned out, this was critical because the Department of Commerce was convinced that they could close the meeting to the public. Brett's charm and rhetoric convinced the panel that they couldn't close the workshop. By the time we were ready to actually go to the meeting, the Panel had rolled out the red carpet for NY Fair Use, giving us an escort up to the 4th Floor.

Finally, at about 12:30 PM, Richard, Seth, Kevin and I marched to the Commerce Department building, with the rest coming later. I handed out our flyers and met with several friends in the press and with other organizations aligned with us. We met with Declan McCullagh from CNet, Robin Gross of the EFF and American Library Association Representative Miriam Nisbet. We told them all of our efforts to protect libraries last year with our Save the Libraries Campaign. People lined up to meet Richard Stallman before the meeting, and eventually the rest of our group arrived at the meeting, filling up the room.

We also had the pleasure of seeing many old friends from the Press including Seattle reporter Sarah Strickland and Bloomberg reporter Katherine Reynolds Lewis. As the meeting started, everyone in our group was wearing the "DRM is Theft" and "We are the Stakeholders" buttons. In fact, we almost ran out.

It was not the plan of NY Fair Use in any way to disrupt the workshop panel. Neither was it the goal of the organization to sit mute in the audience and make our presence felt. Our goal was to clearly participate as audience members of the panel, within the bounds of normal political discourse, as is the rule with such contentious issues. For example, as the meeting started, the Chair began by saying that he'd like to announce that nobody on the panel is a villain. This brought audible laughter from the audience. We were then quiet for the next hour.

At one point, Brett Wynkoop, who couldn't find a chair and finally sat near the panel's table, raised his hand when the Chair asked if anyone else had a comment. The Chair recognized Brett, who then proceeded to announce his name and position as cofounder of NY Fair Use. The Chair tried to unrecognize him, but Brett plowed forward, within the bounds of Rogers Rules of Order, by asking the panel how they could consider regulations and laws that would turn every teenager in America with a magic marker or white-out into a felon. Brett was referring to the recent flap over the attempt by the music industry to produce DRM for audio CDs, which was quickly defeated with a single line made by a marker.

Several minutes of interesting debate followed, which climaxed when one of the lawyers on the panel gave the legal opinion that the courts would never convict anyone for using a magic marker as a circumvention device, because the courts had not considered that a sufficient circumvention method under the DMCA. At this point, I asked if we can get that in writing for the next DMCA trial dealing with digital music. Everyone was jovial at this point, enjoying the open participatory democratic process unfolding before their eyes.

Earlier, a schematic diagram of the current state of DRM development was presented. This alphabet soup of circles and letters was discussed for several minutes; the thing looked similar to a network map of the Internet. Nobody could understand a word of what was being presented, but we sat quietly and listened anyway. At the end of this part of the representation, the image on the projector was flipped, to connect the dots in complete chaos. This fitting image of the state of current DRM schemes would come back to haunt the panel as the presentation went on.

NY Fair Use mostly sat quietly through the meeting, occasionally whispering to each other, until MPAA spokesman Jack Valenti took the floor. At this point, Jack elegantly said in a beautiful, self-effacing fashion, that he hopes that everyone on the panel would give him the courtesy to be heard, and then he would yield the floor to others. At that moment, Vinnie stood up and said, "How can you expect everyone to present their response to your comments when you've left off the panel the most important stakeholders, the public?"; Jack then graciously said that if we let him speak without interruption (not that we seriously interrupted anyone), he would be glad to listen to Vinnie's reply. Jay Sultzberger stood up and said we all agreed. The Chair seemed to be feeling a little uncomfortable at this point, as though he was losing control of the situation. But everyone sat silently and heard Jack speak.

He put on a classic Jack Valenti performance, saying that it was his position that government intervention in this matter wasn't a bad thing. He said his experience in the Johnson Administration passing the 1965 Civil Rights Act showed him how important and good proper government intervention can be. He then continued by saying that it was his hope that the leaders of the IT industry and the computer field would come to a consensus in the next month on a DRM standard that would protect the property of the movie

industry from theft. This caused me to whisper to Vinnie that when the floor returned to him, he should defer comment to Richard Stallman, who was the most qualified and highest ranking IT professional in the building.

When Jack finished, the Chair reluctantly deferred to Jack's wishes and gave the floor to Vinnie. Vinnie then identified himself as a member of NY Fair Use and asked to defer the answer the Richard. Richard stood up, but the Chair didn't let him talk, in violation of the rules of order. Instead he said, "We've already accidentally added one of your members to the panel". He saw no reason why we should be allowed to have another member voice their opinion. This caused the audience to get visibly upset. In response, I intervened and said:

Pardon me, Mr. Chair, but Mr. Valenti nicely pleaded that the leaders of the IT industry come to a consensus on DRM. However, one of the greatest figures in the computing field is standing right here, as part of NY Fair Use group. Richard Stallman has just been given an award in France by the United Nations for his contributions to World Heritage with the invention and development of the GNU/Linux system and its variants. He's the most qualified person in the room to make a public comment in response to Mr. Valenti's request.

My intervention quieted the crowd, as nobody wanted things to break down into a raucous confrontation. Though Richard was still denied a chance to speak, our discipline confirmed that the meeting could continue without derailing the workshop.

However, much of the conversation from that point forward was affected by the events. The Digital Recording Rights Coalition presented more forcefully their position that DRM eroded fair use. Jack, in order to convey how serious the MPAA is about getting DRM enacted quickly, said that while the MPAA responded to a letter from Microsoft about progress toward DRM in 24 hours, that when the MPAA sent such a letter to Microsoft, Microsoft took a long time to respond. Microsoft at this point all but threatened to buy out all of the movie producers if they continued to be such a pain in the neck. Although this was not their exact words, their threat was neither veiled or lost on Mr. Valenti.

Meanwhile, Jack tried to persuade the panel that the movie industry had never really been against the VCR. This caused some agitation among the panelists, and the crowd laughed. The panel pointed out that despite the movie industry's professed love for the VCR, they brought an injunction against panel members whose companies made VCRs—an injunction that was eventually defeated in the Supreme Court.

But Jack was not the only panel member capable of bald-faced lies. EMI tried to convince everyone that artists really don't hate their record labels, but only say so in public because its good PR. Later they claimed the record labels weren't responsible for preventing music from being available and said it is the artists' fault. AOL Time Warner delightfully wants to close the analog hole. And a bunch of other positions were espoused, many of which have been covered by Slashdot ad nauseum and need not be repeated here.

At the end of the session, everyone on the panel had a chance to express themselves exactly as they wished. When it finished, Jay announced that NY Fair Use was having a press conference in front of the Commerce Department Building at 4:30 PM. I gave this press conference with the help of Richard and Jay, and we talked extensively with reporters from Bloomberg and other media organizations. We announced our position, and we announced our proposal for the NY Fair Use "Fair Use Bill".

NY Fair Use attained almost all of our goals for this action. The phrases "We are the stakeholders" and "DRM is theft" have begun to make their way into the press. We are being invited to a new panel on DRM for consumers, the merits of which we are debating now. We are leery of the formation of another panel and question whether it is a stalling tactic. And we have reiterated our position that NY Fair Use wants a seat with the original panel. Capitol Hill was abuzz the next day with our activities. And Congressman Weiner's Office has promised to lead the efforts to bring us onto the panel in the future.

NY for Fair Use has kicked down the door that everyone else will now run through.

You are welcome.

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