

The advent of computer technology and the Internet has led to the creation of new ways to attain and maintain monopolies. Many of the techniques that businesses use to advance these goals are extremely technical in nature and can be confusing or non-obvious to the layman. To aid the committee in this regard I have prepared the following reference for one particularly dangerous monopoly-enabling technology: Digital Rights Management. Digital Rights Management (DRM): Any given software or hardware that is supposed to prevent its user from copying or modifying copy-protected content (music, movies, computer files, etc). It also prevents other companies from creating products or services that can interact with that content. There are many anti-competitive issues with DRM: 1. It allows a company to lock content to their own hardware and software. This forces consumers to purchase hardware and software products only from the company that controls the DRM or from a licensee of that DRM. Once a consumer has purchased digital content controlled by DRM, it creates a disincentive for that consumer to purchase a similar product from any other company as they will not be able to use their purchased content on a non-DRM or different-DRM device. For example: A consumer who has purchased a significant amount of music from Apple's iTunes cannot play that music on a non-Apple player. 2. At any point the company that controls the DRM can revoke a license. This allows the company that controls the DRM to dictate any and all products that enter the market that inter-operate with DRM-protected content. If the DRM-controlling company starts selling a similar product as one of its DRM licensees, they can revoke their license and halt sales of the competing product. 3. Any given DRM system is protected by both trade secret and/or copyright laws. This effectively means it will never expire (as would a patent) and no company/person other than the creator of the DRM can reverse engineer a DRM system (the reverse engineering clause of the Digital Millennium Copyright Act prevents it). In essence, any given DRM system is a permanent monopoly for the company that controls it. 4. When a consumer wishes to purchase digital content that is made available only through one DRM system, they are either forced to purchase a player for that DRM type or to obtain that content illegally (no DRM system can stop determined pirates). This effectively creates a vacuum in the market for digital content that could have otherwise been obtained through a legal competitor. Overall, DRM hurts the market for digital content more than it helps. Consumers do not benefit from it and it completely locks out competition for an indefinite term. -Dan McDougall