



April 29, 2008

Steven A. Ballmer, Chief Executive Officer
Microsoft Corporation
One Microsoft Way
Redmond, WA 98052-7329

Dear Mr. Ballmer,

The Electronic Frontier Foundation is deeply troubled by your announcement last week that Microsoft will be deactivating the digital rights management (“DRM”) servers that allow MSN Music purchasers to “reauthorize” music files after upgrading operating systems or buying new computers. As you know, this decision means that every customer that bought an mp3 from you—with the good faith expectation that despite the irritating DRM she would be able to continue to play the song on a variety of devices—faces losing music if she upgrades her PCs or her hard drive crashes after August 31, 2008.

Microsoft’s only suggestion for its customers—that they export the music to a CD and then copy it onto their new computers—is woefully insufficient to redress the problem. Microsoft is asking its customers to invest more time, labor and money in order to continue to enjoy the music for which they have already paid. In fact, Microsoft’s best customers will be the most heavily burdened—the more music they bought, the more work they’ll have to do. What is worse, this suggestion could put customers at legal risk, as they may not have documentation of purchase. Furthermore, there is no certainty that all relevant copyright owners would agree that making such backup copies without permission is lawful.

While this announcement has directly affected MSN Music customers, users of other Microsoft products (particularly current and prospective Zune customers) are deeply concerned as well. Your customers are forced to ask, “If Microsoft treats its MSN Music customers so shabbily, is there any reason to suppose that it will treat other customers any better?”

We are skeptical of the claim—expressed by Microsoft general manager Rob Bennett in an interview with CNET News—that “no one ever foresaw being in this situation.” This situation was easily foreseeable when Microsoft shut down the MSN Music Store back in 2006. Indeed, as you may know, EFF has long warned consumers that they might lose DRM-restricted content if vendors decided to withdraw support for it. See <http://www.eff.org/pages/customer-always-wrong-users-guide-drm-online-music>

Mr. Bennett also said that Microsoft wants to make the shutdown “as easy and painless for our customers as possible.” In light of this stated goal, Microsoft should immediately and publicly take the following steps:

- 1) Issue a full public apology to your MSN Music customers.
- 2) Offer to refund the purchase price of the affected downloads or, at the customer’s option, provide replacements from an online store that offers the same tracks in a DRM-free format.
- 3) Ensure that all MSN Music buyers have (or have permanent access to) receipts identifying dates, amounts, and titles purchased, so they have proofs of purchase. Or, better yet, offer to cover their legal costs if they are hit with a copyright infringement claim based on a song purchased through MSN Music.
- 4) Work with your content industry partners to eliminate DRM from the Zune music catalog now. Microsoft has said it would like to provide DRM-free tracks—it is time for the company to make that happen. Unless and until DRM is eliminated from the catalog, publicly commit to compensating customers along the lines outlined above should Microsoft’s business decisions cause Zune customers to lose the full value of the content they purchased through the Zune Marketplace.
- 5) Widely publicize the above measures so that Microsoft customers know their options. That publicity should include, at a minimum, advertising in major music magazines and newspapers in every major U.S. city, as well as targeted keyword advertising.

We look forward to hearing that you have begun taking these steps to win back the trust of your customers.

Sincerely,



Shari Steele
Executive Director

cc: Robert J. Bach, President, Entertainment & Devices Division
Brad Smith, Senior Vice President and General Counsel