Delineate between the two interpretations of Section 1201(a)(2) of the Digital Millennium Copyright Act. How do they differ? Which interpretation do you feel is correct? Why?

The Digital Millennium Copyright Act (DMCA) section 1201(a)(2) prohibits an individual from trafficking in any technology, product, service, device, or component that is primarily designed or produced to circumvent a technology that effectively controls access to a copyrighted work; has only limited commercial significant purpose or use other than to circumvent a technological measure that effectively controls access to a copyrighted work; and is marketed by that person or another acting in concert with that person's knowledge for use in circumventing a technological measure that effectively controls access to a copyrighted work.

The scope of 1201 (a)(2) has been interpreted both narrowly and broadly by various courts. The narrow approach requires that a connection between the access that is violated, and the protection of the copyrighted work exists. On the other hand, the broad opposing view pertains to technology that circumvents controls that are used to protect copyrighted content, regardless of whether that technology is actually used to access copyrighted material. These two interpretations also differ in what the plaintiff must prove about the incident. For the narrow approach, the plaintiff must prove that a technological measure effectively controlled its ownership of a copyrighted work; that someone can now access without authorization, and in a manner that infringes a right protected by copyright. The plaintiff should also indicate that the incident occurred due to a product designed or produced primarily for circumvention and made available for use in bypass. When it comes to the broad approach, the plaintiff must prove that the defendant trafficked in a technology that is primarily designed, produced, or marketed and has limited commercial significant use, other than circumventing a technological measure that effectively controls access to a copyrighted work.

I believe that the broad interpretation of section 1201 (a)(2) is more effective in addressing issues that arise from unauthorized access to a copyrighted work. That is, modern violations are increasingly sophisticated and usually involve circumventing various technical controls in place to access protected information. Hence, it is better to have a broad, authoritative interpretation from the beginning to prevent individuals from pursuing technological controls designed to bypass access controls to access copyrighted content. Consequently, it helps in identifying a violation arising from the connection between unauthorized access and the copyrighted work. Furthermore, a broad view can restrict companies from developing, distributing, and utilizing products that assist in bypassing technological measures.

Reference

Kosseff, J. (2017). Cybersecurity Law. Hoboken, N.J: John Wiley & Sons, Inc.