It’s All (just) Bits

SO WHAT?

Two Competing Views
• Programs are bits
• In general, bits are information
• In particular, programs convey information to programmers and others
• Information is protected by freedom of speech
  Therefore, programs are protected speech

• Purpose of programs is to make computers work
• They are can be regulated as devices, even if they are sometimes speech
  Therefore, programs can be regulated with regard to their function, if not their content

DMCA anti-circumvention provision: 17 USC § 1201
(a)(1)(A) No person shall circumvent a technological measure that effectively controls access to a [copyrighted] work
...
(a)(2) No person shall manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component, or part thereof, that

(A) is primarily designed or produced for the purpose of circumventing a technological measure that effectively controls access to a [copyrighted] work

U.S. Constitution, First Amendment
Congress shall make no law ... abridging the freedom of speech