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## Reply Comments to Comment 36.

David B. Carroll

19 February 2003

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### 1. Class of Work

From Comment #36<sup>1</sup>: Audiovisual works as follows: foreign-language audiovisual works not available for sale in the United States but available for purchase outside the US on DVDs that are regionally encoded to prevent playback on DVD players purchased in the United States.

The exemption requested is to permit circumvention of the region coding mechanism.

### 2. Summary of Argument

Additional factual information in support of Comment #36's initial request for an exemption is submitted. The proposed class is compared against a similar class from Comment #35<sup>2</sup>, which offers some advantages over this class.

### 3. Factual Support / Legal Arguments

#### *3.1. Evidence of a need to circumvent DVD region coding for works in this class.*

The Library's solicitation for comments makes it clear that a demonstration of actual or likely damage is a prerequisite for a successful exemption, rather than an argument based solely on hypothetical or legal grounds. I have collected additional examples of, and documentation for, real-world demand for DVD content unavailable in Region 1 ("R1") format.

##### **3.1.1. DVD features unavailable on VHS.**

In rejecting an exemption for circumvention of DVD access controls in 2000, the Library of Congress wrote<sup>3</sup>:

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<sup>1</sup> Carroll, David B. *Comment #36*. 18 Dec 2002. <http://www.copyright.gov/1201/2003/comments/036.pdf>.

<sup>2</sup> Von Lohmann, Fred and Gwen Hinze, Electronic Frontier Foundation, and Gigi Sohn, Public Knowledge. *Comment #35*. Dec 2002. <http://www.copyright.gov/1201/2003/comments/035.pdf>.

From the comments and testimony presented, it is clear that, at present, most works available in DVD format are also available in analog format (VHS tape) as well... When distributed in analog formats--formats in which distribution is likely to continue for the foreseeable future--these works are not protected by any technological measures controlling access... Therefore, any harm caused by the existence of access control measures used in DVDs can be avoided by obtaining a copy of the work in analog format.

It is not true, however, that DVD editions of a film are identical to VHS versions except in format. Frequently DVDs are released with “extras”: ancillary materials such as cast and crew interviews, storyboards, etc. Now, the value of such material is often subjective. Some might argue that the lack of such material does not rise to the level of a “substantial adverse affect”. In my personal experience this is not true: the director’s voiceover on *FLCL #1* DVD and the popup cultural notes on the *Excel Saga* DVDs all aided in my understanding of these works.

There are, however, features available on DVDs the lack of which can render the equivalent VHS edition useless: alternate languages and/or optional subtitles. The VHS format does not support multiple user-selectable audio and overlay video (subtitle) tracks, thus a manufacturer wishing to make subtitles available to certain viewers had no alternative but to make them visible to *all* viewers. This had the effect of preventing English subtitles from being provided on foreign editions of foreign-language films. (Also Spanish subtitles on English VHS releases in the US, and so on.) DVDs, however, support optional user-selectable subtitles, and some producers of foreign-language, non-Region 1 DVDs have chosen to add English subtitles to their products. And as DVDs also support multiple audio tracks, some have even chosen to include English dubs. For a US resident not fluent in the language in question, the English subtitles and/or dialog are not an ancillary “extra” or “bonus”, they are a prerequisite to fully understand and appreciate the film. Depriving such a person of this material has roughly the same “adverse affect” as depriving that person of the entire work.

This is, in fact, one of the reasons I am requesting this exemption from the Library.

### **3.1.2. Personal experience**

My initial comment to the Library was prompted because I, personally, would like to import certain foreign film titles that are unavailable in the US, and for which there are no adequate analog alternatives available anywhere. The DMCA’s restrictions became relevant to me when, early in 2002, I looked into purchasing a DVD player capable of playing imported titles, and was told by a sales clerk at a local electronics store that multiregion players are illegal in the US. Since I was unfamiliar with the details of the DMCA at the time, I was very surprised to hear this! (I am no longer sure that the clerk was correct; apparently it is legal to own an unauthorized DVD player, but not to use it.)

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<sup>3</sup> Final Rule: Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 65 Fed. Reg. 64555, 64574 (2000) at 64568. [Hereafter *2001 Final Rule*].

Since I cannot justify the expense of purchasing extra DVD players for each region's DVDs, I have held off purchasing and viewing these titles.

Titles I definitely intend to import if an exemption is granted include:

- Title: *Omohide Poro Poro / Only Yesterday*  
Production Date: 1991  
Origin Country: Japan  
DVD availability: To be released on 7 March 2003 in Region 2 ("R2") with English subtitles: <http://www.cdjapan.co.jp/detailview.html?KEY=VWDZ-8024>.  
Unavailable in Region 1 format. For worldwide availability see: <http://www.nausicaa.net/miyazaki/opp/availability.html><sup>4</sup>.  
VHS availability: None in US Released on VHS in Japan but without English subtitles: <http://www.cdjapan.co.jp/detailview.html?KEY=VWSZ-8024>.  
Requirement for DVD: Since I am not fluent in Japanese, the English subtitles and language track are a prerequisite for me to fully understand this film.
- Title: *Kurenai no Buta / Porco Rosso*  
Production Date: 1992  
Origin Country: Japan.  
DVD availability: Available in Region 2 with English subtitles and language track: <http://www.cdjapan.co.jp/detailview.html?KEY=VWDZ-8022>. Unavailable in Region 1 format.  
VHS availability: None in USA. Available in Japan but without English subtitles: <http://www.cdjapan.co.jp/detailview.html?KEY=VWDZ-8022>. For complete video availability see: <http://www.nausicaa.net/miyazaki/video/porco/>.  
Requirement for DVD: Since I am not fluent in Japanese, the English subtitles and language track are a prerequisite for me to fully understand this film. Further, the "extras" for the DVD include a complete set of storyboards for the film, which I would very much like to see.
- Title: *Mimi wo Sumaseba / Whisper of the Heart*  
Production Date: 1995.  
Origin Country: Japan.  
DVD availability: Available in Region 2 with English Subtitles: <http://www.cdjapan.co.jp/detailview.html?KEY=VWDZ-8004>. Unavailable in Region 1 format.  
VHS availability: None in USA. Currently out-of-print in Japan: <http://www.cdjapan.co.jp/detailview.html?KEY=VWSZ-8004>. For complete video availability see: <http://www.nausicaa.net/miyazaki/video/mimi/>.
- Title: *Memories*  
Production Date: 1996  
Origin Country: Japan

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<sup>4</sup> <http://www.nausicaa.net> is a fan site that has done extensive and exhaustive research into the availability and history of films directed by Hayao Miyazaki and Isao Takahata as well as other films by Studio Ghibli.

DVD availability: Available in Region 2 with English Subtitles:  
<http://www.cdjapan.co.jp/detailview.html?KEY=BCBA-640>. VHS status unknown – I cannot find a VHS version listed at [www.amazon.co.jp](http://www.amazon.co.jp), [www.cdjapan.co.jp](http://www.cdjapan.co.jp), [www.amotokyo.com](http://www.amotokyo.com) or [www.animation.com](http://www.animation.com), all of which offer the DVD version. Unlicensed and unavailable for sale in the US.  
Requirement for DVD: Since I am not fluent in Japanese, the English subtitles are a prerequisite for me to fully understand this film.

Other titles which I am considering importing at some time in the next three-year period, depending upon US licensing and release (or lack thereof), include:

- Title: *Gauche the Cellist*  
Production date: 1982  
Origin Country: Japan  
DVD Availability: Available in Region 2 with English subtitles:  
<http://www.cdjapan.co.jp/detailview.html?KEY=PIBA-3012>. Not available in Region 1. A region 2 French PAL version also exists.  
VHS availability: No VHS version was **ever** released for this film, according to <http://www.nausicaa.net/miyazaki/video/goshu/>. Pioneer LDC in Japan and “L.C.J.” in France **only** released DVD versions of this movie. Corroborating this web site’s information, I have been unable to locate a VHS version of this film at several on-line stores.
- Title: *Nausicaä of the Valley of the Winds / Kaze no Tani no Naushika*  
Date: 1984  
Origin Country: Japan  
DVD Availability: Widely expected to be published in R2 format within the next two years, by Buena Vista Japan. As all other BV editions of Hayao Miyazaki’s films have English subtitles, they are expected for this as well. No current DVD availability anywhere.  
VHS Availability: Published in Japan by Buena Vista with no English subtitles. Also released as *Warriors of the Wind* in the US in the mid-eighties, but heavily edited and rewritten and anyway now out of print.<sup>5</sup>
- Title: *The Five Star Stories*  
Production date: 1989  
Origin Country: Japan  
DVD Availability: To be released in Japan on 17 Apr 2003 with English subtitles: <http://www.cdjapan.co.jp/detailview.html?KEY=KABD-557>. Not available in any other region.  
VHS Availability: I cannot locate any previously released VHS version of this older film, and the upcoming release appears to be DVD-only. Web searches indicate

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<sup>5</sup> See for details “Nausicaä of the Valley of Wind // Nausicaa.net”. 16 Feb 2003.  
<http://www.nausicaa.net/miyazaki/nausicaa/>.

that a limited-edition Laserdisc version was pressed quite some time ago<sup>6</sup>, but it is known to be long out of print and very difficult to locate even in Japan.

- Title: *My Neighbors the Yamadas*  
Production date: 1999  
Origin Country: Japan  
DVD Availability: Available in Region 2 with English subtitles: <http://www.cdjapan.co.jp/detailview.html?KEY=VWDZ-8030>. Also available in Region 2 PAL format in France, with a French dub. Not available in the US For complete availability data see: <http://www.nausicaa.net/miyazaki/video/yamada/>.  
VHS availability: Available in Region 2 but without English subtitles: <http://www.cdjapan.co.jp/detailview.html?KEY=VWSZ-8030>.  
Requirement for DVD: Since I am not fluent in Japanese, the English subtitles are a prerequisite for me to fully understand this film.
- Title: *A Tree of Palme*  
Production Date: 2002  
Origin Country: Japan  
DVD availability: To be released on 7 March 2003 in Region 2 with English subtitles: <http://www.cdjapan.co.jp/detailview.html?KEY=VWDZ-8024>.  
Unavailable in Region 1 format.  
VHS availability: Despite significant Internet research, I have been unable to determine whether a VHS version was produced. While it is difficult to tell for certain from the US, I could find no mention of a VHS version at [www.cdjapan.co.jp](http://www.cdjapan.co.jp), [www.amotokyo.com](http://www.amotokyo.com) or [www.animation.com](http://www.animation.com), all of which offer the DVD version of *Tree of Palme* as well as non-R1 VHS editions of some other films. As the popularity of VHS for purchase is declining in Japan and worldwide, non-US VHS editions of Japanese films are becoming harder and harder to locate and order internationally.

These are titles that I, personally, know that I would like to import into the United States at this time. Others may become available during the 3-year exemption period. Given the decline in VHS availability projected for the next three year period, I suspect many future films I might like to import may well be available for sale on DVD only.

### **3.1.3. Evidence of demand for foreign DVD content: Usenet.**

Evidence of demand for non-Region 1 DVDs in the US can also be found on Usenet. Usenet is a collection of tens of thousands of discussion groups covering almost any topic. It is a broadcast medium with worldwide distribution, and almost all US internet service providers bundle some level of newsgroup access into their service. There are various newsgroups concerning DVDs, including:

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<sup>6</sup> Mark's Laserdisc Collection. 18 Feb 2003. <http://keyframe.cjas.org/~mneideng/anime-owned.html>.

alt.video.dvd  
alt.dvd.video  
rec.video.dvd.advocacy  
rec.video.dvd.marketplace  
rec.video.dvd.misc  
rec.video.dvd.players  
rec.video.dvd.tech  
rec.video.dvd.titles

These are in addition to discussion groups regarding films, television, or other audiovisual works in which DVDs may be discussed. From my personal experience I can recall Usenet discussions about regional encoding in which US residents sought advice as to how to view imported DVDs, thus Usenet may provide some insight as to how widespread a need to circumvent region-locking is in the US.

At its web site<sup>7</sup>, Google, Inc provides search tools for Usenet posts made since 1981. Over the course of a half-hour I ran a few queries during the first week of February 2003 to gauge the frequency of region circumvention discussion:

- A search for posts containing “region free” in their subject, to any newsgroup with “dvd” in its name, returned 6,350 threads.
- Restricting the above to English-language threads returned 6,060 threads. A quick sample showed some from the US, some from outside.
- A search for posts containing “region” in their subject and “US” somewhere in their body, to any newsgroup with “dvd” in its name returned 5,600 threads.

A quick check showed many discussions about regional encoding, however what fraction were specifically by US residents seeking access to foreign content? To restrict the number of results returned to a more manageable level, I tried to search only for US residents looking to purchase a region-free DVD player, as follows:

- A search for posts containing “region” in their subject, “US” and “\$” somewhere in their body, to the group rec.video.dvd.players, returned 422 threads.<sup>8</sup>

This was a more manageable number. I read through the first 100 of the 422 posts to see what percent were made by US residents needing access to non-R1 DVDs. I counted a message as being made by a US resident if it clearly stated as such in the message body, or if the return email address was US-specific – a US college or US-only ISP, for instance. Of those first 100, roughly 36 fell clearly into this category, thus by extrapolation one might guess 100 to 150 of the 422 total threads fell into this category – over 100 US residents stymied by regional encoding from viewing foreign content

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<sup>7</sup> “GOOGLE Advanced Groups Search”. Google, Inc.  
[http://www.google.com/advanced\\_group\\_search?hl=en](http://www.google.com/advanced_group_search?hl=en).

<sup>8</sup> The query used was [http://groups.google.com/groups?as\\_q=US%20%24&safe=images&ie=UTF-8&oe=UTF-8&as\\_ugroup=rec.video.dvd.players&as\\_usubject=region&lr=&num=100&hl=en](http://groups.google.com/groups?as_q=US%20%24&safe=images&ie=UTF-8&oe=UTF-8&as_ugroup=rec.video.dvd.players&as_usubject=region&lr=&num=100&hl=en).

discovered by a quick Web search. Links for all 36 are given in Appendix A. Excerpts of some of the posts are shown below:

<http://groups.google.com/groups?selm=8i68bp%24ibf%241%40nnrp1.deja.com>

Hi,

I have recently relocated to the US from UK. Does anyone know of any DVD players that can play both regions 1 and 2 (PAL compatible), and where you can obtain such an item?

p.s. Low Cost preferable (I know you can buy converter boxes at \$350++)

<http://groups.google.com/groups?selm=8c15ah%2426l%241%40nnrp1.deja.com>

Can anyone point me in the right direction ?

Why does Japan have a Region 2 if it is NTSC ? I thought Europe was region 2 because it was PAL.

I just bought LEON - International Version (known as THE PROFESSIONAL around here in the states). I can't view it on my DVD player here<sup>9</sup>.

Is there ANY way to view this here in the states without buying a new DVD player ?

Can I get a software crack for a PC DVD player (which still means I have to BUY another DVD player...)?

<http://groups.google.com/groups?selm=3ad3c978%240%2412827%241dc6e903%40news.corecomm.net>

I'm looking for a multi-region dvd for my daughter. Live in US but she wants to play dvd's from France (French major) Any suggestions? Not looking to mortgage house to buy. Would like to use remote to change, not mod chip. Any suggestions of what to get and where to look? Thanks

[http://groups.google.com/groups?selm=3d778803\\_3%40news1.prserv.net](http://groups.google.com/groups?selm=3d778803_3%40news1.prserv.net)

I Have a Fisher DVD-S2000 DVD player and want to order some kids videos out of Norway. There is a override for the region code but will I need a pal to ntsc converter or will using the S Video or component video out allow me to use my NTSC television.

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<sup>9</sup> At the time this post was made (7 Apr 2000), the only version of *Leon: The Professional* available in the US was a censored version with 24 minutes missing. An uncut version has since been made available in R1, see "Leon - The Professional (Uncut International Version) (1994)", 16 Feb 2003, [http://www.amazon.com/exec/obidos/tg/detail/-/B00004YYDI/qid=1045464028/sr=1-1/ref=sr\\_1\\_1/103-0156451-4767002?v=glance&s=dvd](http://www.amazon.com/exec/obidos/tg/detail/-/B00004YYDI/qid=1045464028/sr=1-1/ref=sr_1_1/103-0156451-4767002?v=glance&s=dvd). At the time the post was made, this was exactly the sort of content for which an exemption is required.

<http://groups.google.com/groups?selm=IAI26.1187%24C11.11797%40weber.videotron.net>

Has anyone successfully turned its DVD player into a region free player in North America ? If yes, which model are you owning, and what was the procedure ? Are region free players a myth ? I am having a hard time finding a model that will let me change the region code.

I will soon buy a DVD player for my living room, and since I own DVDs of both regions 1&2, I need to be able to view both.

<http://groups.google.com/groups?selm=841le7%248kk%241%40eskinews.eskimo.com>

Can't speak for everybody else, but personally I enjoy Anime and I also like a lot of Hong Kong films, not all are released in the US, and those that are released here are usually horribly dubbed.

I've had a laser disk in the past, and laser disks are of coarse not region coded so this was never an issue until DVD went mainstream, companies stopped producing LD's and now I'm screwed.

I've got a Phillips/Magnavox 825 DVD for which I'd very much like a region hack. I'd also like a hack to disable Macrovision, not that I have any desire to copy DVD, but because it screws up my TV (RCA rear projection, Macrovision causes the scan lines in the upper left corner to stretch way out and convergence to go really bad. Very strange effect but if Macrovision isn't enabled, then it's not a problem).

<http://groups.google.com/groups?selm=fea22524.0205092113.1597fed5%40posting.google.com>

I bought 30 dvds from south korea and tried to play them on my dvd player but got a message that my Panasonic dvd player(sold in US market) is unable to play dvds of region 3.

My questions are as follows:

1. Are there models sold in US that can play Region 3 dvds?
2. Can a USA model be altered to play Region 3?
3. Why do region codes exist?

<http://groups.google.com/groups?selm=7dta18%241nn%242%40ultranews.duc.auburn.edu>

I am thinking of getting a DVD player. Most of the titles that I would like to buy I can get here, but there are a few foreign DVDs that I would like to get. For example, I'd like to get a Japanese copy of Mad Max because it has the original accents (the US version has a lot of redubbed dialogue) but I guess

it's in the wrong region for me. According to IMDB, the US version doesn't have the original dialogue.

I am only starting to investigate DVD technology, the whole concept of regions is kind of annoying to me (though maybe I'm missing something).

So, is it possible to get an all-region DVD player?

<http://groups.google.com/groups?selm=19990725220204.24128.00002157%40ng-fw1.aol.com>

I'm a big fan of movies...so much that that I love special editions of movies unreleased in the U.S.

I was wondering if there was a way of changing region encoding on my Pioneer 414 (which is great BTW). I know it may void warranty, but I think it is worth it to see some of these hard to get foreign titles and special editions. Any help would be GREATLY APPRECIATED!!! Overseas shipping is not recommended...I live in Minnesota, and anywhere local would be GREAT!

Any help would be greatly appreciated. I feel that corporate industries who use this encoding method for licensing rights have sometimes censored things for American audiences. Don't you hate it when companies dumb everything down for Americans? They never do it in Japan!

<http://groups.google.com/groups?selm=ss7v7roth3t16%40corp.supernews.com>

Wouldn't it be more convenient to have all DVD players capable of playing all DVDs? I really don't understand why there are different DVD formats. Could someone explain?

Also, there is a DVD I want that is only out on Region 2 DVD and I live in the US. Are there any DVD players that are capable of playing Region 1 AND 2?

<http://groups.google.com/groups?selm=7aqlu3%2455h%241%40nnrp1.dejanews.com>

I have a Panasonic A105 DVD player. Since I live in the US, this DVD player is made for region 1 DVDs. I am trying to play Tina Turner Live in Amsterdam. This particular DVD is encoded Region 0. Theoretically, this DVD should play on my DVD player, correct? It does not. I was told by Panasonic customer support that this is a "problem" with all Panasonic players. They will only play DVDs for the region that the DVD is encoded for - but NOT REGION 0 (which they should play, at least as I understand DVD).

I \*know\* the player should play ONLY Region 1, BUT I thought ALL players should also play REGION 0 DVDs....correct?

<http://groups.google.com/groups?selm=9e514333.0110241131.33a2de71%40posting.google.com>

I have a Sony DVP-S360 player (it's in US, region 1), and I bought some DVD from China with Chinese translation/subtitle for my parents, but my player won't display them complaining about the incorrect region and there's no way that I can purchase those DVDs here. How do I make my player to show those DVDs? Is there any hidden menu in this player that you can change the region or modification kit that you can use to change the region?

<http://groups.google.com/groups?selm=381C83B0.7695B710%40creighton.edu>

First I want to ask if anyone has pointers to Region Free DVD players or DVD-roms I can get here in the US. Also I would be happy with a region 2 DVD-rom assuming that games don't use region encoding. My computer is relatively slow so I'd like to get a decoder card as well. Thanks for your help,

PS. I live in the United States and am dissapointed that very few DVDs have a Spanish soundtrack or even French. Region 2 DVDs seem to be the answer except I can't play them. This really makes me angry. Is there anyone I can complain to to make myself feel better?

Thus Usenet clearly shows many US residents looking for ways around DVD regional encoding. For a complete listing of all 36 Usenet posts, see Appendix A.

### **3.1.4. Evidence of demand for foreign DVD content: message boards and Web sites.**

Much like Usenet, there are many English-language internet sites with message boards devoted to the topic of foreign-language film and television, including foreign DVDs. One such internet forum, those of US-based fan site "[Anime on DVD](#)", contain 8255 messages specifically discussing "Region 2, 3 & 4 DVD News & Views", as of 16 Feb 2003.<sup>10</sup>

Requests for help in dealing with regionally encoded discs are common on such sites. Again as of 16 Feb 2003, one forum hosted by a US-based internet anime retailer has 64 messages in 6 threads on the topic of region-free players. Another forum hosted by a popular US webcomic shows 74 messages in 4 threads on the topic of watching out-of-region DVDs. And in the forums at one popular US amateur review site for anime, there are 326 posts in 25 distinct threads discussing ways to get access to out-of-region DVD content without having to purchase multiple players, one for each region.

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<sup>10</sup> "AnimeOnDVD.com Community Forums - Board Main - Forum listings". 16 Feb 2003. <http://forums.animeondvd.com/dcboard.php>.

Thus it appears the demand for access to non-Region 1 material is strong. What's more, it appears that people may already be accessing or seeking access to this content by using unauthorized players. How can this be?

### **3.1.5. Lack of understanding of § 1201(a)(1) may be placing US residents in disproportionate legal jeopardy.**

When discussing the topic of the legality of bypassing DVD regional coding, I have found significant confusion as to what is, and is not, allowed. Above I noted that a sales clerk for a local consumer electronics retailer once claimed that region-modded DVD players are illegal under the DMCA. On the other hand, a quick Google search for "Region Free DVD Player" reveals a variety of Internet retailers who ship region-free DVD players to the US, such as [www.codefreedvd.com](http://www.codefreedvd.com) and [www.zonefreedvd.com](http://www.zonefreedvd.com). The latter states on its Web site:

Is it legal to use or own a Code free DVD player?

Yes, it is legal. You are legally allowed to own a Code free DVD player, but you can not use it for illegal purposes. Please check your State and Federal copyright laws for details.<sup>11</sup>

And as of Monday 17 February 2003 there are 254 region free DVD players for sale on eBay available for shipment to the US and priced in US dollars.<sup>12</sup> Might the availability, though very limited as compared to R1 players, of region-free players be misleading US residents into believing that it is legal to use them?

A Google search regarding the legality of region-modding a DVD player turns up the article "DVD Region Codes Explained" on the Web site of "TechTV", a US cable channel, which states:

Owning a multi-region DVD player is not illegal, but the MPAA frowns upon them, because many of these players do not have the DVD copy protection called Macrovision.<sup>13</sup>

Beyond that article, Google searches turn up little by way of definitive information on the DMCA's application to regional encoding – mainly sites selling region-modded DVD players, sites distributing hacked firmware for DVD-ROM, and sites outside the US are returned instead.

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<sup>11</sup> *ZoneFreeDVD: Code Free DVD Player information for all DVD Players*. 16 Feb 2003.

<http://zonefreedvd.com/codefreedvd/regionfreedvdfaq.html#f>.

<sup>12</sup> <http://cq->

[http://search.ebay.com/search/search.dll?MfcISAPICommand=GetResult&ht=1&query2=region+free+dvd+player&search\\_option=1&minPrice=&maxPrice=&category0=293&exclude=&st=&SortProperty=MetaLowestPriceSort&maxRecordsPerPage=100&region=0&worldlocation=ebayctry&available\\_to=1&located\\_in=1&ebaycurr=1&submit=+Search+&siteid=0&query=region+free+dvd+player&shortcut=&ebaytag1code\\_tmp=1&ebaytag1\\_tmp=ebayavail&ebaytag1code=1&ebaytag1=ebayavail&ebaytag12=ebayreg&from=R14](http://search.ebay.com/search/search.dll?MfcISAPICommand=GetResult&ht=1&query2=region+free+dvd+player&search_option=1&minPrice=&maxPrice=&category0=293&exclude=&st=&SortProperty=MetaLowestPriceSort&maxRecordsPerPage=100&region=0&worldlocation=ebayctry&available_to=1&located_in=1&ebaycurr=1&submit=+Search+&siteid=0&query=region+free+dvd+player&shortcut=&ebaytag1code_tmp=1&ebaytag1_tmp=ebayavail&ebaytag1code=1&ebaytag1=ebayavail&ebaytag12=ebayreg&from=R14)

<sup>13</sup> Prager, David and Roman Loyola. "DVD Region Codes Explained". *TechTV – The Screen Savers*. 4 Feb 2002. 16 Feb 2003. <http://www.techtv.com/screensavers/answerstips/story/0,24330,3300958,00.html>.

In fact, the commenter is uncertain as to the precise legal status of multiregion DVD players. In my original Comment #36, I took a position that purchasing or importing a region-free DVD player is illegal under §1201(a)(2). I no longer am certain this is true, and thus take no position on this issue. §1201(a)(2) states (*italics added*)

(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 work protected under this title;

(B) has only *limited commercially significant purpose or use other than to circumvent a technological measure* that effectively controls access to a work protected under this title; or

(C) is marketed by that person or another acting in concert with that person with that person's knowledge for use in circumventing a technological measure that effectively controls access to a work protected under this title.

A region-free DVD player, however, is not primarily designed to circumvent a technological measure (regional coding), it is primarily designed to play DVDs. Circumvention of regional coding is a secondary feature. *Use* of such a device to view access-controlled DVDs would appear to be a violation of § 1201(a)(1) in any event, hence my Comment #36. If this analysis is correct, ZoneFreeDVD's answer to the question "Is it legal to use or own a Code free DVD player?" looks extremely misleading.

Thus available information as to the legality of bypassing regional coding is sketchy and confusing. In personal correspondence I have found it to be the case that people who have no interest in pirating any copyrighted content, and are aware that the DMCA outlaws decryption utilities such as DeCSS, have no idea that using a multiregion player might place them in legal jeopardy. For instance, one person wrote the following to me recently:

Region-modding is PERFECTLY legal in the US. (It's not a form of copy protection.) It just happens to void warranties, and corporations don't like it. There's a difference.<sup>14</sup>

I have encountered this interpretation of the DMCA again and again.

While some might argue that this request for an exemption is unnecessary since US residents currently may be bypassing regional encoding without censure (so far) from copyright holders, I take an opposite view. US residents may have already exposed themselves unknowingly to civil liability entirely disproportionate to their actions by

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<sup>14</sup> Chu, L. Personal communication. 3 Feb 2003.

viewing on unauthorized hardware non-R1 DVDs that they legally purchased and imported for personal use. The possibility of legal (even criminal) action against such people who in no way have violated any exclusive rights of copyright owners makes the case for an exemption even stronger. And as the details of how the DMCA applies to region coding become more widely known, more and more people will choose to forego access to copyrighted content rather than violate the law.

### **3.1.6. Region coding exacerbates pre-existing technical incompatibilities.**

During the Library of Congress's hearings for the 2000 rulemaking there were discussions regarding the level of adversity that DVD regional coding causes US residents. From the transcripts of the 19 May 2000 rulemaking hearings, it appears a question arose as to whether region code assignments followed pre-existing technical incompatibilities (NTSC vs. PAL vs. SECAM) closely enough that no additional adverse impact was caused. On that topic, Dean Marks of the Motion Picture Association of America observed:

First of all, consumer electronics audiovisual equipment has been developed with a certain degree of regionalization. There are different formats in different countries of the world. The US is NTSC format, Europe is PAL format. If someone were to buy a videocassette that had been manufactured -- straight old analog videocassette that had been manufactured in the US, it would be in the NTSC format.

That videocassette would not be playable in Europe on PAL format televisions and videocassette players. This situation has existed since the introduction of video in the early or mid-80s with no complaint. So I find it a bit interesting that now this issue of regional coding has become such a hot button for certain communities<sup>15</sup>.

In fact, DVD regional encoding has created incompatibilities where none had existed previously. Most obviously, both Japan and Mexico use NTSC television standards, and prior to the introduction of DVDs, audiovisual content (either VHS or Laserdisc) imported from these countries would have been playable on standard US equipment. DVD regional encoding, however, places Japan in Region 2 and Mexico in Region 4<sup>16</sup>. Thus as content from these countries increasingly becomes available for purchase only on region-locked DVD, it will increasingly become unwatchable on standard US equipment due only to artificial restrictions rather than any technical incompatibility.

But are a significant number of DVDs released in these countries region-locked? In Japan, most domestic DVDs (or at least, DVDs of animated material) are indeed limited

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<sup>15</sup> Marks, Dean. *Hearing on Exemption to Prohibition of Circumvention of Copyright Protection Systems for Access Control Technologies*, Docket No. Rm 9907, Friday, May 19, 2000. Library of Congress, 2000. pp. 205-206. Page numberings are from the RTF version available on the Web at <http://www.copyright.gov/1201/hearings/1201-519.rtf>.

<sup>16</sup> *Regional Management Information Code*. 16 Feb 2003. <http://www.unik.no/~robert/hifi/dvd/world.html>.

to use in Region 2 players. CDJapan<sup>17</sup>, a major exporter of Japanese DVDs to the US who have an English-language web site, state:

Unless otherwise specified, almost all of the DVDs we carry are Region 2 encoded, as they are Japanese DVDs.<sup>18</sup>

A review of Japanese DVDs offered at another vendor of R2 DVDs, AnimeNation<sup>19</sup>, shows that, of 51 imported series on DVD for sale as of 14 February 2003, all but one, *Animation Runner Kuromi*, are Region-2 specific<sup>20</sup>.

As for Mexico, a review of Mexican web retailers [www.mixup.com](http://www.mixup.com), [shopping.terra.com.mx](http://shopping.terra.com.mx) and [www.decompras.com](http://www.decompras.com) indicates that a variety of DVDs are indeed offered in Region 4 rather than all-region format. Some are non-US titles; others offer features unavailable in R1 format which may be desirable to certain US residents. The R4 version of *Braveheart* (*Corazón Valiente*), for instance, offers Spanish and Portuguese subtitles unavailable on the R1 version.<sup>21</sup>

Countries with NTSC television standards that nevertheless have been placed outside Region 1, rendering otherwise compatible DVDs sold in these countries unusable with US consumer DVD players, include:<sup>22</sup>

Country	DVD Region	Country	DVD Region
Chile	4	Mexico	4
Columbia	4	Myanmar	3
Costa Rica	4	Nicaragua	4
Dominican Republic	4	Panama	4
El Salvador	4	Peru	4
Guatemala	4	Philippines	3
Haiti	4	South Korea	3
Honduras	4	Taiwan	3

<sup>17</sup> <http://www.cdjapan.co.jp>.

<sup>18</sup> *cdjapan.co.jp: About Products*. 16 Feb 2003. [http://www.cdjapan.co.jp/member/f\\_products.html#3](http://www.cdjapan.co.jp/member/f_products.html#3).

<sup>19</sup> <http://www.animenation.com/>.

<sup>20</sup> *AnimeNation - Import DVD*. 14 Feb 2003. <http://www.animenation.com/video-import-dvd.html>.

<sup>21</sup> *Decompras - DVD Corazón Valiente, Región 4*. 17 Feb 2003.

<http://www.decompras.com/webapp/commerce/command/ProductDisplay?storeName=decompras&prfnbr=381826&prmenbr=262374&CMP=0>.

<sup>22</sup> *Worldwide Video Broadcast Standards*. Alken M.R.S

*Worldwide Video Conversions*. 17 Feb 2003. <http://www.alkenmrs.com/video/wwstandards1.html> and also King, Bevis. *Broadcasting System Details*. 6 Dec 1999. 14 Feb 2003.

<http://www.ee.surrey.ac.uk/Contrib/WorldTV/broadcast.html>.

Jamaica	4	Venezuela	4
Japan	2		

### 3.1.7. US demand for Japanese animation: updated data.

Comment #36 uses Japanese animation (“anime”) as an example of works in the defined class for which a demand exists in the US for material not available domestically, and cites various market data to estimate the magnitude of the demand. Updated information for 2002 has since become available. Internet news site *ICv2*, a site which provides “news and information for pop culture retailers”, has done a study of the size of the anime market in the US, and concluded that it now approaches \$500 million at retail<sup>23</sup>, somewhat larger than the \$250 million figure 2001 estimated by John O’Donnell of Central Park Media, an anime distributor.<sup>24</sup>

Comment #36 also cites several works by specific directors and studios as having unmet US demand. Since then, one of the films mentioned, *Laputa: Castle in the Sky* has been scheduled for US release by Disney, along with two other works directed by the same director, Hayao Miyazaki: *Spirited Away* and *Kiki’s Delivery Service*. Although these titles will not be shipped until 15 April 2003, they have been selling well on a pre-order basis at internet retailers. Amazon.com, for instance, reports the following “sales ranks”:

Film / Sales Rank	11 Feb 2003	16 Feb 2003	19 Feb 2003
<i>Spirited Away</i>	6	46	38
<i>Castle in the Sky</i>	23	230	122
<i>Kiki’s Delivery Service</i>	33	375	157

Despite this positive development, the other films by Miyazaki mentioned in Comment #36 (and by th) remain unavailable in R1 format. The demonstrated demand for these three titles strongly indicates that demand exists for the remaining unavailable works. Indeed, in Amazon.com’s “Customer Reviews” for *Castle*, 5 separate reviewers comment that they would like to buy these missing films.<sup>25</sup> Many US fans (myself included) are particularly looking forward to the expected R2 release of *Nausicaä of the Valley of the Winds*, which, despite only having received a horribly censored and rewritten US video

<sup>23</sup> “ICv2 News - ICv2 Retailers Guide Sizes Up the Markets”. *ICv2*. 12 Nov 2002. 16 Feb 2003. <http://www.icv2.com/articles/news/2016.html>.

<sup>24</sup> Tei, Andrew and Mariela Ortiz. “Anime 101”. *Anime on DVD*. 31 Aug 2002. 14 Feb 2003. <http://www.animeondvd.com/press/conventions/axny2002/anime101.php>.

<sup>25</sup> *Amazon.com: Customer Reviews: Castle in the Sky (1986)*. 19 Feb 2003. [http://www.amazon.com/exec/obidos/tg/stores/detail/-/dvd/B00005JKYG/customer-reviews/1/ref=cm\\_rev\\_prev/002-7288887-0095255?show=-submittime](http://www.amazon.com/exec/obidos/tg/stores/detail/-/dvd/B00005JKYG/customer-reviews/1/ref=cm_rev_prev/002-7288887-0095255?show=-submittime).

release in the mid-eighties<sup>26</sup>, is currently ranked as the 50<sup>th</sup> favorite animated film of all time by popular film reference internet site “The Internet Movie Database” (IMDB) as of 16 Feb 2003, with 1294 votes.<sup>27</sup>

### 3.1.8. Additional data on DVD-only releases.

Comment #36 mentions that several studios in the US have already partially or completely abandoned VHS editions of their products. To show how quickly things are moving, consider the following:

- Distributor Bandai Entertainment has completely abandoned manufacturing and selling VHS tapes<sup>28</sup>. While previously manufactured Bandai VHS tapes are still offered for sale here and there, their entire 166-title catalog is now DVD-only.<sup>29</sup>
- Between 1 Jan 2003 and 19 Feb 2003, AD Vision has released 12 of 16 DVD titles with no corresponding VHS edition.<sup>30</sup>

Release Date	AD Vision DVD Title	VHS also?
01/07/2003	<u>Dai-Guard Vol. #3</u>	<u>No</u>
01/07/2003	<u>Devil Lady Vol. #1: The Awakening</u>	<u>No</u>
01/07/2003	<u>Robotech New Generation Collection</u>	<u>No</u>
01/07/2003	<u>Sailor Moon Vol. #13: Time Travelers</u>	<u>Yes</u>
01/07/2003	<u>Sailor Moon Vol. #14: Love Conquers All</u>	<u>Yes</u>
01/14/2003	<u>Excel Saga Vol. #4</u>	<u>No</u>
01/14/2003	<u>Zone of Enders Dolores i Vol. #2: Operation Escape!</u>	<u>No</u>
01/21/2003	<u>Burn Up Excess Vol. #4</u>	<u>No</u>
01/23/2003	<u>Medabots Vol. #07</u>	<u>Yes</u> <sup>31</sup>
01/28/2003	<u>Hello Kitty's Paradise: Fun With Friends</u>	<u>Yes</u>
02/04/2003	<u>Wild Arms Vol. #1 (also w/box)</u>	<u>No</u>
02/11/2003	<u>All-Purpose Cultural Cat-Girl Nuku Nuku Collection</u>	<u>No</u> <sup>32</sup>

<sup>26</sup> FAQ // *Nausicaä of the Valley of Wind* // *Nausicaa.net*. 17 Feb 2003.

<http://www.nausicaa.net/miyazaki/nausicaa/faq.html#warrior>.

<sup>27</sup> See <http://us.imdb.com/Charts/Votes/animation> and <http://us.imdb.com/Title?0087544>.

<sup>28</sup> *Bandai Entertainment - Frequently Asked Questions*. 19 Feb 2003. <http://www.bandai-ent.com/faq/#4>.

<sup>29</sup> *Bandai Entertainment - Products*. 19 Feb 2003. Go to <http://www.bandai-ent.com/products/> and select “Show All”.

<sup>30</sup> *Table compiled from* Beveridge, Chris. “Anime 2K3 Checklist”. *AnimeOnDVD.COM*. 19 Feb 2003.

<http://www.animeondvd.com/releases/checklist2003.php>. and from ADV Films. *ADV FILMS – Catalog*. 19 Feb 2003. <http://www.advfilms.com/catalog/>.

<sup>31</sup> The DVD is a re-release of an earlier VHS edition.

02/11/2003	<u>Chance Pop Session Vol. #2</u>	<u>No</u>
02/18/2003	<u>Dai-Guard Vol. #4</u>	<u>No</u>
02/18/2003	<u>Devil Lady Vol. #2: The Becoming</u>	<u>No</u>
02/18/2003	<u>Noir Vol. #1: Shades of Darkness (Regular &amp; Special Edition)</u>	<u>No</u>

- Between 1 Jan 2003 and 19 Feb 2003, Pioneer USA has released 11 of 13 DVD titles with no corresponding VHS edition.<sup>33</sup>

Release Date	Pioneer DVD Title	VHS also?
01/07/2003	<u>Cardcaptor Sakura Vol. #13</u>	<u>No</u>
01/21/2003	<u>Hellsing Vol. #4</u>	<u>No</u>
01/21/2003	<u>Hellsing Vol. #4 (W/Figure)</u>	<u>No</u>
01/21/2003	<u>Vandread Second Stage Vol. #3</u>	<u>No</u>
01/28/2003	<u>Amazing Nurse Nanako Box Set</u>	<u>No</u>
01/28/2003	<u>Lupin the 3rd TV Vol. #01: The World's Most Wanted</u>	<u>No</u>
01/28/2003	<u>Mahoromatic Vol. #1: Combat Maid</u>	<u>No</u>
01/28/2003	<u>X Vol. #3</u>	<u>No</u>
02/11/2003	<u>Hand Maid May Box Set</u>	<u>No</u>
02/11/2003	<u>Hand Maid May Box Set w/Figure</u>	<u>No</u>
02/11/2003	<u>Strawberry Eggs Vol. #4</u>	<u>No</u>
02/11/2003	<u>Zoids Vol. #6</u>	<u>Yes</u>
02/18/2003	<u>Sailor Moon Super S TV Vol. #6</u>	<u>Yes, on two tapes.</u>

### 3.1.9. Single-region foreign players can be difficult in practice to locate and purchase.

In 2000 rulemaking, it was observed that out-of-region DVDs could be viewed by acquiring an out-of-region DVD player locked to that particular region. While this is certainly true in principle, in practice doing so may present to a typical US resident much

<sup>32</sup> Previously released on 3 separate VHS tapes, see <http://www.animecastle.com/vnuku.html>, which are now apparently out of print.

<sup>33</sup> Table compiled from Beveridge, Chris. "Anime 2K3 Checklist". and from Pioneer Animation. *Pioneer Titles*. 19 Feb 2003. <http://www.pioneeranimation.com/titles.php>.

more formidable difficulties than simply acquiring a multiregion player. Consider the case of a Japanese DVD. Japan uses US television standards (NTSC) but is included in Region 2, which otherwise mainly covers Europe. Thus a DVD player ordered from, say, the UK which uses PAL standards would not necessarily either interconnect with a US television or play a Japanese DVD. Instead an actual Japanese model is required. But how to find one? No local (Boston) retailers carry them to the best of my knowledge.

Web searches (in English) for “Region 2 DVD player” turn up a variety of sites that are willing to ship an unauthorized multiregion player to the US – but none that ship Japanese Region 2 players internationally. This is not surprising; in many countries (such as the UK, Australia, New Zealand and, I believe, Canada) use of a multiregion players is not illegal. Why would somebody in such a country import an out-of-region player instead of a multiregion player? Further, the regional coding system by its nature clearly encourages retailers who ship internationally to stock multiregion players rather than region-locked players. A retailer can hold fewer items in stock while serving a greater variety of buyers. A search for “Region 2 DVD player” on eBay on 18 Feb 2003 returned a single player, a used JVC about which the seller wrote “IT ONLY PLAYS DVDS FROM EUROPE”.<sup>34</sup> (Compare vs. the 254 region-free players for sale there.) Attempts to contact the seller about whether it will also play DVDs from Japan have been unsuccessful.

There are also several English-language web sites that ship Region 2 Japanese DVDs to the US, however none of these sell R2 DVD players. Probably there are Japanese language sites that sell “pure” Region 2 players – but the language barrier can make it difficult to impossible for many US residents to order from such sites, and many will not ship internationally. It might also be possible to telephone a retailer in Japan and order a player by credit card, but practically speaking few US residents would have any idea how to go about doing so. Finally of course one could travel to Japan and purchase a DVD player there, but few could justify such an expense just in order to watch imported DVDs!

### ***3.2. Additional data regarding The effect of circumvention of DVD regional encoding on the market for or value of copyrighted works.***

#### **3.2.1. Impact on US theatrical revenues – non-R1 DVDs are almost always released well after US theatrical premieres.**

In Comment #36 it was observed that, if US residents were to be given permission to bypass regional locking for DVDs in this class, this should have no significant impact on US theatrical revenues because movies tend to open first in the US, then elsewhere. The DVD CCA has stated that regional locking is intended to allow staggered showing of films from country to country without the need to worry that DVD imports from an

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<sup>34</sup> “JVC 3 Disk DVD Player Region 2 Only”, *eBay Item 3008669536 (Ends Feb-24-03 10:02:53 PST)* 18 Feb 2003, <http://cgi.ebay.com/ws/eBayISAPI.dll?ViewItem&item=3008669536>.

earlier country might undercut theatrical revenues in a later one<sup>35</sup>. If movies almost always open first in the US, region code circumvention *here* couldn't be a problem. But if a significant number of movies do open in other countries first, the Library of Congress might balk at granting US residents this exemption. Not only might the market value of such films be decreased, but a reduction in the theatrical availability of films could deprive US residents who do not own a DVD player or other home video equipment of any access to these works.

But what percent of movies do open first in the US? An analysis suggests that the vast majority do. The internet web site [BoxOfficeMojo](http://www.boxofficemojo.com)<sup>36</sup> collects and reports box office data for films in both US and foreign markets. From their tables "[2002 Domestic Grosses 1-50](#)"<sup>37</sup> and "[2002 Domestic Grosses 51-100](#)"<sup>38</sup> I extracted a list of the top 100 films (by US box office take) that premiered in 2002, as of 15 Feb 2003. That list was cross-referenced against international opening dates as given at the web site "[The Internet movie Database](#)"<sup>39</sup>. Of the 100 films, 97 either opened almost simultaneously in the US and in other countries, or in the US before any other country.<sup>40</sup> Of the remaining three, "About a Boy" opened in the UK three weeks before opening in the US. For the other two, "Spirit: Stallion of the Cimarron" and "Bad Company", the pre-US-opening showings seem to be isolated events or errors, as no revenue seems to have been associated. Thus, since a DVD of a film will generally be released in a foreign country after its theatrical exhibition in that country, and foreign theatrical runs occur simultaneously with or later than US runs, there is little chance of imported foreign DVDs undercutting box office revenue in the US.

However, might non-R1 DVDs become available in a foreign country prior to a film's theatrical exhibition in that country? It seems unlikely, but should be checked. Two of the 100 films, "Beauty and the Beast (IMAX)" and "E.T. (20<sup>th</sup> anniversary)", were re-releases of older films. Both were re-releases of older films, and in both cases R1-format and non-R1 format DVDs were already available for purchase. The remaining 98 were new films for which no non-R1 DVD was released until after their non-R1 theatrical displays, which (as has been shown) took place after their US theatrical runs.

Thus the chance that, if individual US residents were able to circumvent DVD regional coding for audiovisual works in this class, then US theatrical revenues would be impacted, is remote.

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<sup>35</sup> *Frequently Asked Questions (FAQ)*. DVD Copy Control Association. 17 Feb 2003. <http://www.dvdcca.org/faq.html>.

<sup>36</sup> <http://www.boxofficemojo.com>

<sup>37</sup> Gray, Brandon. *2002 DOMESTIC GROSSES #1-50*. Box Office Mojo. 16 Feb 2003. <http://www.boxofficemojo.com/yearly/chart/?yr=2002&p=.htm>

<sup>38</sup> Gray, Brandon. *2002 DOMESTIC GROSSES #51-100*. Box Office Mojo. 16 Feb 2003. <http://www.boxofficemojo.com/yearly/chart/?page=2&yr=2002&p=.htm>

<sup>39</sup> <http://www.imdb.com>

<sup>40</sup> In analyzing this data, I ignored film festival showings and "premiere" industry showings not open to the general public.

The complete list of the top 100 films of 2002 , together with opening dates, is in Appendix B.

Further evidence that consumer ability to circumvent regional coding in the US will not harmfully impact box office revenues or theatrical availability here comes from other countries, for instance the United Kingdom. In the UK circumvention of regional coding is widespread. According to the BBC's 2002 article "Border controls crumble in DVD land", the regional encoding system is "on the verge of collapse" there, and

In practice, most if not all DVD players sold in the UK can be made to play discs from other regions and many, perhaps most, do... This does not mean that manufacturers are shipping players that are multi-region, but that they can be modified by retailers, or can be made multi-region by the user.<sup>41</sup>

As confirmation, at Amazon.co.uk as of 17 February 2003, X of the ten best-selling DVD players, including the top two, are explicitly advertised as being multi-region.<sup>42</sup>

Despite widespread circumvention of regional coding, however, UK theatrical box office revenues have grown strongly in recent years. According to the *European Cinema Yearbook - 2002 advance edition*, both gross revenues and revenues per capita have improved since 1999.<sup>43</sup>

UK Box Office Data	1999	2000	2001
Gross box office revenues, EURO X 1,000	883,595	944,142	1,034,317
Admissions X 1,000	139,059	142,507	155,911
Annual frequency per capita	2.34	2.39	2.60

And in August 2002 the BBC reported that the UK had record cinema admissions in July of that year, with the highest figures for 31 years.<sup>44</sup>

Given that the vast majority of films exhibited and sold in the US are exhibited and sold *first* in the US, as has been shown, and given the narrow definition of the class of works made by Comment #36, there is no reason to believe that market demand for multiregion players in the US would approach anywhere near that in the UK. Thus it is doubtful that the cost of aftermarket modification to R1 players would ever become minimal due to economies of scale.

<sup>41</sup> Rubens, Paul. "Border controls crumble in DVD land". *BBC News*. 19 Aug 2002. 17 Feb 2003. [http://news.bbc.co.uk/1/hi/in\\_depth/sci\\_tech/2000/dot\\_life/2197548.stm](http://news.bbc.co.uk/1/hi/in_depth/sci_tech/2000/dot_life/2197548.stm)

<sup>42</sup> *Amazon.co.uk: Electronics / Home Entertainment / DVD Players*. Amazon.co.uk. 17 Feb 2003. [http://www.amazon.co.uk/exec/obidos/tg/browse/-/560860/ref=br\\_bc\\_h\\_2\\_1/026-7621152-1514044](http://www.amazon.co.uk/exec/obidos/tg/browse/-/560860/ref=br_bc_h_2_1/026-7621152-1514044).

<sup>43</sup> MEDIA Salles. *European Cinema Yearbook - 2002 advance edition*. Milan: MEDIA Salles, 2002. pp. 62-67. <http://www.mediasalles.it/yindex02advedition.htm>

<sup>44</sup> "Record July for UK box office". *BBC News*. 19 Aug 2002. 17 Feb 2003. <http://news.bbc.co.uk/1/hi/entertainment/2202561.stm>

### **3.2.2. Impact on the licensing of foreign works for US distribution – a correction.**

§3.4 of Comment #36 argued that permission to bypass regional coding for works in the narrowly defined class would have little negative impact on the licensing of foreign material for release in the US. One point was made that -

Even if the Library approves this exemption, trafficking in circumventing technology - i.e. multiregion DVD players – will continue to be prohibited. Thus an individual wishing to view non-region one content must personally circumvent the region access control, such playback devices will not be available for sale.

As noted previously, I am no longer certain that this is correct. However, the argument remains valid because:

- All DVD players manufactured for sale in the US will continue to be Region-1 only.
- Aftermarket modifications to DVD players that permit DVDs from multiple regions to be viewed here will increase the cost of the player. Many desirable players may not be modifiable at all.
- According to the DVD Entertainment Group, there is already an installed base of over 56 million DVD players in the US, almost all of which are clearly Region-1 specific.<sup>45</sup> Current owners would need to retroactively modify such players, a tricky process.
- The prevalence of multiregion players in countries such as the UK seems to stem from issues of pricing and release timing that do not hold true in the US market, thus market demand for foreign DVDs is much higher there than here.
- Whereas the vast majority of theatrical films exhibited in the US are locally produced, in the UK a significant majority of exhibited films are foreign – American, in fact. In 2000, domestically produced films had a 21% market share while American produced films enjoyed a 77% market share there.<sup>46</sup>
- Thus, as argued in Comment #36, only those seeking material otherwise unavailable domestically have any real incentive to go to the added trouble and expense of locating a multiregion DVD player with aftermarket modifications, rather than purchasing a “normal” player from a conventional consumer electronics vendor.
- Importation of multiple copies of non-R1 DVDs for resale in the US is forbidden under Title 17 § 602. US residents will need to individually import single copies of foreign DVDs.
- Individual importation has always been permitted for other media such as CDs, books, and phonorecords. Is there any evidence that this has caused significant negative impact to US licensing?

And the other two points made in §3.4 remain valid:

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<sup>45</sup> DVD Entertainment Group. *DVD Software Sales Drive Video Industry to Record Breaking \$20 Billion Year*. 9 Jan 2003. 18 Feb 2003. <http://www.dvdinformation.com/news/press/010903.htm>

<sup>46</sup> MEDIA Salles, pp 84-86.

- US distributors of foreign-language content provide a valuable service, namely subtitling and (if appropriate) dubbing – and, in addition, *marketing, advertising and distribution, using their knowledge of US markets and culture.*
- US DVD editions of foreign-language audiovisual works are frequently **cheaper** than the original foreign versions.

Thus there is no cause to expect eventual sales of US versions of works originally the defined class to be significantly harmed by the proposed exemption. Therefore, there is no reason to anticipate a reduction in the number of foreign works licensed for sale here.

### **3.2.3. Granting an exemption for the defined class will not encourage or promote copying or copyright infringement.**

In the 2000 rulemaking process, there appears to have been significant consideration given to the fact that movie studios would be unwilling to release material on DVDs (or any other digital medium) without the presence of technological control measures to prevent piracy. This was recognized by the *2000 Final Rule*, which in denying an exemption for DVD circumvention states:

The release of audiovisual works on DVDs was predicated on the ability to limit piracy through the use of technological access control measures.<sup>47</sup>

Similarly, during the 19 May 2000 hearings, Dean Marks stated:

My company would not have released its motion pictures on the DVD format if DVD did not incorporate technological measures.<sup>48</sup>

These statements seem to address a broader issue than the target of the rulemaking process, now or then. DVDs will continue to be released with access controls including CSS and regional coding regardless of the outcome of the rulemaking. At question now is whether US residents will be able to circumvent those access controls for the limited class of works defined in Comment #36.

Regarding such circumvention, fears were expressed in 2000 that if permission were granted even in limited cases to circumvent regional DVD coding by using “DeCSS” to copy the digital video and audio data out from the DVD, this would somehow encourage the proliferation of digital copying, and digital copies.<sup>49</sup>

However, while it would be possible to circumvent regional encoding by using DeCSS to “rip” the video and audio streams out of a DVD onto a computer hard disk, this is by no means the most straightforward method of bypassing regional codes. By doing so one

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<sup>47</sup> *2001 Final Rule* at 64569.

<sup>48</sup> Marks, Dean. p. 189.

<sup>49</sup> Marks, Dean. p. 266, 276.

loses the ability to access the DVD through its menu system. One must instead assemble and sequence the multiple audio and video streams manually, for each disc in question. Furthermore this technique is counterintuitive and nonobvious, since one seeks merely to *view* the DVD, not to copy it.

A much more reasonable and simple method for viewing the DVD would be to obtain a multiregion DVD player, modify an existing R1 DVD player physically, or make changes to the “firmware” in a DVD-ROM drive. (“Firmware” is a small program embedded in a piece of hardware that controls its operations.) These options are described in the TechTV article mentioned above<sup>50</sup>, and they in no way facilitate copying or circumvention of CSS. Indeed, Bruce H. Turnbull of the DVD Copy Control Association stated as much in his “Post Hearing” reply to the 2000 rulemaking:

The regional coding functions are not included in CSS and are entirely separate functions, therefore there is no incentive to hack CSS in order to manipulate such functions.<sup>51</sup>

Thus permission to circumvent DVDs in the narrow class defined by Comment #36 will in no practical way encourage the proliferation of, familiarity with, or use of DeCSS or other copying tools.

### ***3.3. Comparison against some other similar classes proposed in the 2003 rulemaking.***

Several initial comments to the 2003 rulemaking define try to define a class of audiovisual materials for exemption based upon availability only in non-Region-1 DVD format. These include Comments #17<sup>52</sup>, #32<sup>53</sup> (Class 6), #35 (Class 2) and #36. Upon reviewing these comments, it appears that Comment #36 falls short in attempting to define the exemption class based upon *foreign language*. An obvious set of DVDs which should be exempted by the logic of Comment #36’s argument, but would not be, consists of foreign editions of *US films* with language and/or subtitle tracks not present on the US edition. Extra non-English tracks may be a necessity for a US resident not fluent in English. (Recall the Usenet poster excerpted on p.10 of this reply comment. That person wanted to buy R2 versions of US films because they have Spanish and/or French language tracks.) In any event the US has no official language, rendering the definition of “foreign language” unclear.

Comments #32 and #35 avoid these issues by defining the class of works to be exempted based purely on availability in the Region 1 format. These classes are slightly broader than the class defined by Comment #36, but are still narrow enough to permit circumvention only for a small percent of audiovisual works. Since Class #6 of

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<sup>50</sup> Prager, David and Roman Loyola. “DVD Region Codes Explained”.

<sup>51</sup> Turnbull, Bruce H. *Comments of the DVD Copy Control Association in Response to Hearing Testimony*. 23 June 2000. <http://www.copyright.gov/1201/post-hearing/turnbull.pdf>.

<sup>52</sup> Truow, Greg. *Comment #17*. Dec 2002. <http://www.copyright.gov/1201/2003/comments/017.pdf>.

<sup>53</sup> Greenfeld, Samuel. *Comment #32*. Dec 2002. <http://www.copyright.gov/1201/2003/comments/032.pdf>.

Comment #36 deals only with regionally coded DVDs, all arguments, including those regarding the “me minimis” harm the exemption might cause to copyright owners, made in support of Comment #36 carry over as-is to this class.

## **Appendix A: Usenet posts by US residents seeking help in viewing regionally coded DVDs: a sample.**

The “Google Groups” query "US \$ group:rec.video.dvd.players insubject:region", as described above, returned 422 unique threads. I examined the first 100 returned, and of those, these 36 I deemed very likely to have been made by US residents seeking help in viewing audiovisual content on non-R1 DVDs.

1. <http://groups.google.com/groups?selm=399329C3.51EB80CF%40sequent.com>
2. <http://groups.google.com/groups?selm=8i68bp%24ibf%241%40nnrp1.deja.com>
3. <http://groups.google.com/groups?selm=71102m%24hfq%241%40nnrp1.deja.com>
4. <http://groups.google.com/groups?selm=8c15ah%2426l%241%40nnrp1.deja.com>
5. <http://groups.google.com/groups?selm=380fb0a8%40cs.colorado.edu>
6. <http://groups.google.com/groups?selm=38CDA33F.987A1BFC%40tivo.com>
7. <http://groups.google.com/groups?selm=3ad3c978%240%2412827%241dc6e903%40news.corecomm.net>
8. <http://groups.google.com/groups?selm=uLTO%24d7bAHA.275%40cpmsnbbsa09>
9. <http://groups.google.com/groups?selm=7hk3j1%24bic%241%40news.chaven.com>
10. <http://groups.google.com/groups?selm=42ff179c.0201031713.4d74b06b%40posting.google.com>
11. <http://groups.google.com/groups?selm=MISz6.36752%24Hd3.8737042%40news1.rdc1.ne.home.com>
12. [http://groups.google.com/groups?selm=3d778803\\_3%40news1.prserv.net](http://groups.google.com/groups?selm=3d778803_3%40news1.prserv.net)
13. <http://groups.google.com/groups?selm=IAI26.1187%24CII.11797%40weber.videotron.net>
14. <http://groups.google.com/groups?selm=841le7%248kk%241%40eskinews.eskimo.com>
15. <http://groups.google.com/groups?selm=80hqt8%2477m%241%40nnrp1.deja.com>
16. <http://groups.google.com/groups?selm=19981214005128.04732.00002015%40ng-ce1.aol.com>
17. <http://groups.google.com/groups?selm=UVS66.5224%24aU3.567396%40news.uswest.net>
18. <http://groups.google.com/groups?selm=806pub%24hvp%241%40autumn.news.rcn.net>
19. <http://groups.google.com/groups?selm=fea22524.0205092113.1597fed5%40posting.google.com>
20. <http://groups.google.com/groups?selm=7dta18%241nn%242%40ultranews.duc.auburn.edu>
21. <http://groups.google.com/groups?selm=wkSI7.6096%24oM5.183345%40typhoon.mw.mediaone.net>
22. <http://groups.google.com/groups?selm=19991211162341.11947.00000059%40ng-cl1.aol.com>
23. <http://groups.google.com/groups?selm=Xns91EF1B1FB3681danvegsonacnet%40130.133.1.4>
24. <http://groups.google.com/groups?selm=3CA516B8.C4B0E616%40attglobal.net>
25. <http://groups.google.com/groups?selm=19990725220204.24128.00002157%40ng-fw1.aol.com>
26. <http://groups.google.com/groups?selm=ss7v7roth3t16%40corp.supernews.com>
27. <http://groups.google.com/groups?selm=Vu963.103%24rf2.2284%40grover.nit.gwu.edu>
28. <http://groups.google.com/groups?selm=7aqlu3%2455h%241%40nnrp1.dejanews.com>
29. <http://groups.google.com/groups?selm=98jdk%24t3%40dispatch.concentric.net>
30. <http://groups.google.com/groups?selm=b3hu4.5838%24iA5.54236%40typhoon2.san.rr.com>
31. <http://groups.google.com/groups?selm=3A0DB9FA.31AE3E68%40tampabay.rr.com>
32. <http://groups.google.com/groups?selm=9e514333.0110241131.33a2de71%40posting.google.com>
33. <http://groups.google.com/groups?selm=381C83B0.7695B710%40creighton.edu>
34. <http://groups.google.com/groups?selm=37ba3857%40news1.us.ibm.net>
35. <http://groups.google.com/groups?selm=androidF7IMzE.L6o%40netcom.com>
36. <http://groups.google.com/groups?selm=38E3CD94.9B26B9F3%40home.com>

## Appendix B: Opening dates for the 100 highest-grossing films that opened in 2002.

The cross-reference chart for the top 100 films is below. Data in columns 1-4 taken from [BoxOfficeMojo](#) is © 1998-2003 by Brandon Grey. Data in columns 5 and 6 is [Copyright © 1990-2003 Internet Movie Database Inc.](#)

Rank	Movie Title	Studio	Total US Gross	US Opening	Earliest non-US opening
1	<a href="#">Spider-Man</a>	Sony	\$403,706,375	<a href="#">3 May 2002</a>	<a href="#">3 May 2002</a>
2	<a href="#">Lord of the Rings: The Two Towers</a>	NL	\$322,669,000	<a href="#">5 Dec 2002 limited; 18 Dec wide</a>	<a href="#">10 Dec 2002 limited; 18 Dec wide</a>
3	<a href="#">Star Wars: Episode II - Attack of the Clones</a>	Fox	\$302,191,252	<a href="#">16 May 2002</a>	<a href="#">16 May 2002</a>
4	<a href="#">Harry Potter and the Chamber of Secrets</a>	WB	\$260,087,936	<a href="#">15 Nov 2002</a>	<a href="#">3 Nov 2002 (UK limited); 14-15 Nov 2002 wide</a>
5	<a href="#">My Big Fat Greek Wedding</a>	IFC	\$240,211,037	<a href="#">19 Apr 2002 (limited)</a>	<a href="#">21 Jun 2002 (Iceland)</a>
6	<a href="#">Signs</a>	Dis.	\$227,966,634	<a href="#">2 Aug 2002</a>	<a href="#">2 Aug 2002</a>
7	<a href="#">Austin Powers in Goldmember</a>	NL	\$213,307,889	<a href="#">26 Jul 2002</a>	<a href="#">26 Jul 2002</a>
8	<a href="#">Men in Black II</a>	Sony	\$190,418,803	<a href="#">3 Jul 2002</a>	<a href="#">3 Jul 2002</a>
9	<a href="#">Ice Age</a>	Fox	\$176,387,405	<a href="#">15 Mar 2002 (wide)</a>	<a href="#">14 Mar 2002</a>
10	<a href="#">Die Another Day</a>	MGM	\$160,353,661	<a href="#">22 Nov 2002</a>	<a href="#">18 Nov 2002 (UK premiere)</a>
11	<a href="#">Catch Me If You Can</a>	DW	\$157,851,000	<a href="#">16 Dec 2002 (LA); 25 Dec 2002 (wide)</a>	<a href="#">25 Dec 2002</a>
12	<a href="#">Scooby-Doo</a>	WB	\$153,294,164	<a href="#">14 Jun 2002</a>	<a href="#">14 Jun 2002</a>
13	<a href="#">Lilo &amp; Stitch</a>	Dis.	\$145,794,338	<a href="#">21 Jun 2002</a>	<a href="#">21 Jun 2002</a>
14	<a href="#">XXX</a>	Sony	\$142,109,382	<a href="#">9 Aug 2002</a>	<a href="#">9 Aug 2002</a>

15	<u>The Santa Clause 2</u>	Dis.	\$139,236,327	<u>1 Nov 2002</u>	<u>1 Nov 2002</u>
16	<u>Minority Report</u>	Fox	\$132,072,926	<u>21 Jun 2002</u>	<u>20 Jun 2002</u>
17	<u>The Ring</u>	DW	\$128,637,115	<u>18 Oct 2002</u>	<u>18 Oct 2002</u>
18	<u>Sweet Home Alabama</u>	Dis.	\$127,141,665	<u>27 Sep 2002</u>	<u>27 Sep 2002</u>
19	<u>Mr. Deeds</u>	Sony	\$126,293,452	<u>28 Jun 2002</u>	<u>15 Aug 2002</u>
20	<u>The Bourne Identity</u>	Uni.	\$121,661,683	<u>14 Jun 2002</u>	<u>22 Aug 2002</u>
21	<u>The Sum of All Fears</u>	Par.	\$118,907,036	<u>31 May 2002</u>	<u>31 May 2002</u>
22	<u>8 Mile</u>	Uni.	\$116,491,675	<u>8 Nov 2002</u>	<u>8 Nov 2002</u>
23	<u>Road to Perdition</u>	DW	\$104,454,762	<u>12 Jul 2002</u>	<u>12 Jul 2002</u>
24	<u>Panic Room</u>	Sony	\$96,397,334	<u>29 Mar 2002</u>	<u>29 Mar 2002</u>
25	<u>Red Dragon</u>	Uni.	\$93,149,898	<u>4 Oct 2002</u>	<u>4 Oct 2002</u>
26	<u>Maid in Manhattan</u>	Sony	\$92,647,709	<u>13 Dec 2002</u>	<u>13 Dec 2002</u>
27	<u>Two Weeks Notice</u>	WB	\$92,042,100	<u>20 Dec 2002</u>	<u>20 Dec 2002</u>
28	<u>The Scorpion King</u>	Uni.	\$91,047,077	<u>17-19 Apr 2002</u>	<u>15-18 Apr 2002</u>
29	<u>Spy Kids 2: The Island of Lost Dreams</u>	Dim.	\$85,846,429	<u>7 Aug 2002</u>	<u>16 Aug 2002</u>
30	<u>Blade II</u>	NL	\$82,348,319	<u>22 Mar 2002</u>	<u>27 Mar 2002</u>
31	<u>Snow Dogs</u>	Dis.	\$81,172,560	<u>18 Jan 2002</u>	<u>8 Mar 2002</u>
32	<u>We Were Soldiers</u>	Par.	\$78,122,718	<u>1 Mar 2002</u>	<u>6 Mar 2002</u>
33	<u>Barbershop</u>	MGM	\$75,781,642	<u>13 Sep 2002</u>	<u>20 Feb 2003</u>
34	<u>The Rookie</u>	Dis.	\$75,600,072	<u>29 Mar 2002</u>	<u>4 Jun 2002</u>

35	<u>Spirit: Stallion of the Cimarron</u>	DW	\$73,280,117	<u>24 May 2002</u>	<u>24 Jan 2002</u> (German-speaking areas of Switzerland) <sup>54</sup> ; <u>20 Jun 2002</u> (Elsewhere)
36	<u>Chicago</u>	Mira.	\$72,129,000	<u>10-27 Dec 2002</u> (limited); <u>24 Jan 2003</u> (wide)	<u>26 Dec 2002</u> (limited); <u>17 Jan 2003</u> (UK & Canada wide)
37	<u>John Q.</u>	NL	\$71,756,802	<u>15 Feb 2002</u>	<u>6 Mar 2002</u>
38	<u>Gangs of New York</u>	Mira.	\$70,960,000	<u>20 Dec 2002</u>	<u>20 Dec 2002</u>
39	<u>Divine Secrets of the Ya-Ya Sisterhood</u>	WB	\$69,599,016	<u>7 Jun 2002</u>	<u>22 Aug 2002</u>
40	<u>Insomnia</u>	WB	\$67,355,513	<u>24 May 2002</u>	<u>6 Jun 2002</u>
41	<u>Changing Lanes</u>	Par.	\$66,818,548	<u>12 Apr 2002</u>	<u>12 Jul 2002</u>
42	<u>Stuart Little 2</u>	Sony	\$64,956,806	<u>19 Jul 2002</u>	<u>18 Jul 2002</u>
43	<u>Jackass: The Movie</u>	Par.	\$64,255,312	<u>25 Oct 2002</u>	<u>25 Oct 2002</u>
44	<u>The Time Machine</u>	DW	\$56,832,494	<u>8 Mar 2002</u>	<u>7 Mar 2002</u>
45	<u>Drumline</u>	Fox	\$55,373,277	<u>13 Dec 2002</u>	<u>21 Feb 2003</u>
46	<u>The Count of Monte Cristo</u>	Dis.	\$54,234,062	<u>25 Jan 2002</u>	<u>15 Feb 2002</u>
47	<u>Unfaithful</u>	Fox	\$52,775,765	<u>10 May 2002</u>	<u>31 May 2002</u>
48	<u>Like Mike</u>	Fox	\$51,432,760	<u>3 Jul 2002</u>	<u>11 Dec 2002</u>
49	<u>The Tuxedo</u>	DW	\$50,547,998	<u>27 Sep 2002</u>	<u>1 Oct 2002</u>
50	<u>About Schmidt</u>	NL	\$50,480,000	<u>13 Dec 2002</u> (limited); <u>4 Jan 2003</u> (wide)	<u>13 Dec 2002</u> (Netherlands)

<sup>54</sup> It appears that the Swiss release was not wide, as no European revenue or admissions are reported by [IMDB](http://us.imdb.com/Business?0166813) until June, see <http://us.imdb.com/Business?0166813>. Anyway, no Region 2 European DVD for this film was released until 4 Nov 2002, when, according to [Amazon UK](#), a British edition was released. Later, according to [Amazon Germany](#), a German-language R2 version of this title became available on 5 Dec 2002, see <http://us.imdb.com/Sales?0166813> for details.

51	<u>Return to Never Land</u>	Dis.	\$48,430,258	<u>15 Feb 2002</u>	<u>21 Feb 2002</u>
52	<u>Big Fat Liar</u>	Uni.	\$48,360,547	<u>8 Feb 2002</u>	<u>14 Jun 2002</u>
53	<u>Reign of Fire</u>	Dis.	\$43,061,982	<u>12 Jul 2002</u>	<u>12 Jul 2002</u>
54	<u>Star Trek: Nemesis</u>	Par.	\$42,880,142	<u>13 Dec 2002</u>	<u>13 Dec 2002</u>
55	<u>High Crimes</u>	Fox	\$41,543,917	<u>5 Apr 2002</u>	<u>2 May 2002</u>
56	<u>About a Boy</u>	Uni.	\$41,385,278	<u>17 May 2002</u>	<u>26 Apr 2002</u> <u>(UK)</u>
57	<u>A Walk To Remember</u>	WB	\$41,281,092	<u>25 Jan 2002</u>	<u>21 Mar 2002</u>
58	<u>Orange County</u>	Par.	\$41,076,018	<u>11 Jan 2002</u>	<u>4 Apr 2002</u>
59	<u>Windtalkers</u>	MGM	\$40,914,068	<u>14 Jun 2002</u>	<u>20 Jun 2002</u>
60	<u>Blue Crush</u>	Uni.	\$40,390,647	<u>16 Aug 2002</u>	<u>16 Aug 2002</u>
61	<u>The Master of Disguise</u>	Sony	\$40,388,794	<u>2 Aug 2002</u>	<u>18 Oct 2002</u>
62	<u>Resident Evil</u>	Sony	\$40,119,709	<u>15 Mar 2002</u>	<u>21 Mar 2002</u>
63	<u>Collateral Damage</u>	WB	\$40,077,257	<u>8 Feb 2002</u>	<u>6 Feb 2002</u>
64	<u>Enough</u>	Sony	\$40,007,742	<u>24 May 2002</u>	<u>9 Aug 2002</u>
65	<u>Undercover Brother</u>	Uni.	\$39,089,928	<u>31 May 2002</u>	<u>20 Sep 2002</u>
66	<u>The Wild Thornberrys</u>	Par.	\$39,013,892	<u>20 Dec 2002</u>	<u>4 Jan 2003</u>
67	<u>Treasure Planet</u>	Dis.	\$38,120,554	<u>27 Nov 2002</u>	<u>27 Nov 2002</u>
68	<u>Showtime</u>	WB	\$38,082,712	<u>15 Mar 2002</u>	<u>28 Mar 2002</u>
69	<u>40 Days and 40 Nights</u>	Mira.	\$37,950,822	<u>1 Mar 2002</u>	<u>1 Mar 2002</u>
70	<u>Crossroads</u>	Par.	\$37,191,304	<u>15 Feb 2002</u>	<u>8 Mar 2002</u>
71	<u>Clockstoppers</u>	Par.	\$36,989,956	<u>29 Mar 2002</u>	<u>26 Jul 2002</u>
72	<u>The Mothman Prophecies</u>	SGem	\$35,746,370	<u>25 Jan 2002</u>	<u>20 Feb 2002</u>
73	<u>E.T. (20th Anniversary)</u>	Uni.	\$35,306,015	<u>22 Mar 2002</u>	<u>26 Mar 2002</u>
74	<u>K-19: The Widowmaker</u>	Par.	\$35,168,966	<u>19 Jul 2002</u>	<u>25 Jul 2002</u>

75	<u>The Hot Chick</u>	Dis.	\$34,114,641	<u>13 Dec 2002</u>	<u>13 Dec 2002</u>
76	<u>I Spy</u>	Sony	\$33,561,137	<u>1 Nov 2002</u>	<u>1 Nov 2002</u>
77	<u>Friday After Next</u>	NL	\$32,983,713	<u>22 Nov 2002</u>	<u>13 Dec 2002</u>
78	<u>Space Station 3-D (IMAX)</u>	Imax	\$32,139,270	<u>19 Apr 2002</u>	<u>27 Apr 2002</u>
79	<u>Analyze That</u>	WB	\$32,094,284	<u>6 Dec 2002</u>	<u>2 Jan 2003</u>
80	<u>Murder by Numbers</u>	WB	\$31,945,749	<u>19 Apr 2002</u>	<u>5 Jun 2002</u>
81	<u>One Hour Photo</u>	FoxS	\$31,597,131	<u>21 Aug 2002</u>	<u>23 Aug 2002</u>
82	<u>Halloween: Resurrection</u>	Mira.	\$30,354,442	<u>12 Jul 2002</u>	<u>11 Jul 2002</u>
83	<u>Queen of the Damned</u>	WB	\$30,336,800	<u>22 Feb 2002</u>	<u>22 Feb 2002</u>
84	<u>Dragonfly</u>	Uni.	\$30,323,400	<u>22 Feb 2002</u>	<u>5 Apr 2002</u>
85	<u>The Banger Sisters</u>	FoxS	\$30,307,416	<u>20 Sep 2002</u>	<u>14 Nov 2002</u>
86	<u>Bad Company</u>	Dis.	\$30,160,161	<u>7 Jun 2002</u>	<u>26 Apr 2002 (Colombia)<sup>55</sup>;</u> <u>13 Jun 2002 (Israel &amp; elsewhere)</u>
87	<u>Ghost Ship</u>	WB	\$30,113,491	<u>25 Oct 2002</u>	<u>25 Oct 2002</u>
88	<u>The New Guy</u>	Sony	\$29,760,152	<u>10 May 2002</u>	<u>28 Jun 2002</u>
89	<u>SwimFan</u>	Fox	\$28,564,995	<u>6 Sep 2002</u>	<u>20 Sep 2002</u>
90	<u>The Crocodile Hunter: Colission Course</u>	MGM	\$28,442,574	<u>12 Jul 2002</u>	<u>12 Jul 2002</u>
91	<u>Brown Sugar</u>	FoxS	\$27,363,891	<u>11 Oct 2003</u>	<u>None yet</u>
92	<u>Blood Work</u>	WB	\$26,235,081	<u>9 Aug 2002</u>	<u>27 Sep 2002</u>
93	<u>All About the Benjamins</u>	NL	\$25,916,319	<u>8 Mar 2002</u>	<u>29 Mar 2002</u>
94	<u>Jonah: A VeggieTales Movie</u>	Art.	\$25,581,229	<u>4 Oct 2002</u>	<u>None yet</u>

<sup>55</sup> The Colombia release date reported by IMDB may be a festival showing or in error; no revenue is reported by IMDB until the US opening, see: <http://us.imdb.com/Business?0280486>. Additionally, I cannot locate a DVD for sale for this movie other than in Region 1 format.

95	<u>Beauty and the Beast (IMAX)</u>	Dis.	\$25,487,190	<u>1 Jan 2002 - IMAX version</u>	<u>1 Jan 2002 - IMAX version</u>
96	<u>The Transporter</u>	Fox	\$25,296,447	<u>11 Oct 2002</u>	<u>11 Oct 2002</u>
97	<u>The Sweetest Thing</u>	Sony	\$24,718,164	<u>12 Apr 2002</u>	<u>12 Apr 2002</u>
98	<u>Eight Crazy Nights</u>	Sony	\$23,607,202	<u>27 Nov 2002</u>	<u>5 Dec 2002</u>
99	<u>The Hours</u>	Par.	\$23,529,000	<u>27 Dec 2002 (limited)</u>	<u>27 Dec 2002 (limited)</u>
100	<u>Frida</u>	Mira.	\$23,414,589	<u>25 Oct 2002 (limited)</u>	<u>1 Nov 2002 (limited)</u>