

717 Saco Ct.  
St. Augustine, Fl. 32086

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June 2, 2006

Mr. David Carson  
The Library of Congress  
Copyright Office  
101 Independence Ave., SE  
Washington, DC 20559-6000

RE: follow up comments

Dear Mr. Carson,

Thank you for the opportunity to respond to your request for additional information on my testimony of March 31<sup>st</sup> 2006.

I'd like to address your first question, "whether it is appropriate for the copyright office to entertain Mr. Montoro's statements and evidence with regard to these additional proposals which were not included in the initial comments?" First let me say, I only need to be reminded once as to when you would like to have all materials submitted, and it is already on my 2008 calendar.

The additional proposals mentioned in your letter were in the initial comments (#2) of Jonathan Band, Library Copyright Alliance and Music Library Association and initial comment #4 of Brewster Kahle, The Internet Archive. While I do support their request, it was not the new class of works I requested be exempt at the end of my testimony (pg 179 ln 10 of the transcripts). That class was, *Computer programs protected by dongles that prevent access due to malfunction or damage or hardware or software incompatibilities or require obsolete operating systems or obsolete hardware as a condition of access.*

My reply comment was specific and included an example, in support of Mr. Band's initial comments #2, and his request for **Renewal of Existing Exemptions , number 2, A) Classes of Works For Which Exemptions Are Requested (2) Computer programs protected by dongles that prevent access due to malfunction or damage and which are obsolete.**

In 2000 and 2003, the documents I submitted were not made part of the public record because of the sensitive nature of some of those submissions. For example, documents from the United States Department of Justice containing email addresses, street addresses and contact information. I thought the same would be true regarding my 2006 testimony which included sensitive information from the United States Naval Surface Warfare Center and another email from an employee of a nuclear reactor power plant.

Mr. Kasunic in a May 2003 email said "I agree with you about publishing the communications on the web and we have decided not to publish them, but to make them available to certain parties on the panel who have expressed an interest in reviewing them". (I can forward that to you if requested) I did fear that if the items were submitted before my testimony, they would become part of the permanent record and that could be a security risk.

There is a section at the end of The Notice of Inquiry, #4 Hearings and Further Comments, that states “To provide sufficient flexibility in this proceeding, in the event that unforeseen developments occur that would significantly affect the Register's recommendation, an opportunity to petition the Register for consideration of new information will be made available after the deadlines specified.” I believe my statements and evidence would fall under this paragraph given the history of my testimony in these preceding in 2000 and 2003, and the evidence presented that actual harm exists and that the current exemption has had a substantial positive effect on noninfringing uses. Therefore I would request that my testimony and exhibits be included in this session.

## The merits of the proposals and submissions.

There was a question raised by Mr Tepp and Mr. Metalitz that some of my submissions in 2006 were rehashed from my 2003 testimony. My exhibits and testimony may seem familiar, however that is only because the problems with these dongles continues to exist! My testimony at the previous rulemaking was given on May 2<sup>nd</sup> of 2003 and only exhibit 20 of 23 submitted with my testimony in 2006 was before that date. The rest are after my May 2<sup>nd</sup> 2003 testimony. Of the additional 150 pages of actual harm caused by dongle examples I submitted as supplemental material, 133 pages are dated post May 2<sup>nd</sup> 2003 and only 2 of the 17 had been previously submitted, and those were the articles by computer experts Ed Foster and Jim Seymour. Regardless of the day they were written, they should still be considered as evidence since the access control devices and software programs are still in the marketplace today.

Computer software and dongles are a worldwide business. Dongle maker Alladin is based in Israel, while SafeNet is based in the United States. Nearly all of the computer programs mentioned in my exhibits were written by companies from the USA. Examples are provided to illustrate the problems with these devices, which can happen to anyone, anywhere.

I'd like to clarify something regarding dongles and operating systems. A dongle does not operate by itself. The dongle is a hardware piece that communicates with a software program (or device driver in the case of newer operating systems). The dongle maker does not program the dongle device; rather they sell a model of “blank” dongle to a software vendor that in turn, programs that model dongle with data to only communicate with an individual software package. It depends on the operating system (and available software & hardware) as to whether or not the dongle can function properly. When everything does not work together, it is not a user error, but is a problem with the dongle/software program communication.

We have all seen businesses get bought and sold. The most dramatic change in circumstance today and what sets this rulemaking session apart from the first two, is the sale of dongle maker Rainbow Technologies to SafeNet Inc and SafeNet discontinuing the manufacture and support for more than 6 dongle products from the Rainbow line, and not supporting any of those products under the Windows 64 bit operating system. (Exhibit 16 & 17) Now regardless of what operating system, there are no more replacement dongles available. Those hundreds of thousands of devices that have been discontinued are now obsolete.

My testimony and the exhibits I provided clearly demonstrates that there are problems with these access control devices called dongles. Exhibit 2, 2c, from the Naval Surface Warfare Center, a Department of Defense lab, how mission critical having a working product is and that once someone is trained in a particular version of a software program, even if a newer version was available, that newer version may not serve the end user's needs. Plus files that were saved in one version are not always readable by another version.

This also shows that with all the resources our government has, they are not able to do what a small businessman in St Augustine Florida can do, that is replace a malfunctioning and obsolete dongle device. To my knowledge, I remain the only company in the world that is authorized to provide this service to the US Government. If an exemption is not granted or renewed, even if the US Government falls within the exemptions already granted in the DMCA, there will be no one to provide that relief. The dongle companies can not do it, they only sell blank dongles.

Throughout the exhibits we see people that have experienced dongle failures, companies going out of business, companies not supporting a product any longer and hardware/software incompatibilities. In exhibit 8, we see a consumer that has invested years of CAD drawings and because of an obsolete operating system and dongle, they would lose all that work because they can not get drivers to work under newer operating systems.

In Exhibits 4 and 12, we see examples of companies being forced to maintain unsupported hardware (old legacy machines) and software just to run dongled programs. Rackmount servers do not come with parallel ports and it would be a fair use for one to bypass a dongle to maintain compatibility. The same could be said of a user that had a desktop computer with a printer port, but had a laptop without one.

Being able to bypass a dongle that can not work properly and can not access software on a current hardware/software platform, does **no harm** whatsoever to the industry since the end user seeking relief is **already a licensed user** and has **already purchased** the dongled software. This **increases the availability of copyrighted works.**

As judge Randy Jackson of American Idol would say, "Let's keep it real". I think it is fairly safe to say, that given the exemptions granted in 2000 and 2003 regarding dongles, if there were **ANY** proof, of **ANY** negative effects from those exemptions, the Joint Reply Commenter's and others would have submitted those papers long ago. Now 6 ½ years later, there still are none.

The exemptions of 2000 and 2003 have provided the relief for which they were intended. The sky never fell nor have manufacturers been harmed.

**I apologize to the members of the panel for any inconvenience and do not want to delay the process further by a debate on the new class of work I proposed. I would be satisfied and I think the public interest would still be served, if we went back to the "or" exemption from 2000, or at the very least, the current exemption was renewed.**

Thank you for your consideration,

Sincerely,

(submitted via email)  
Joseph V Montoro  
President  
Spectrum Software Inc.

Cc via email:  
Steven J. Metalitz  
Rob Kasunic