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Rob Kasunic
Principal Legal Advisor
Office of the General Counsel
United States Copyright Office
rkas@loc.gov

VIA E-MAIL

Re: Post-Hearing Questions
Docket No. RM 2008-8: Exemption to Prohibition on Circumvention of Copyright Protection
Systems for Access Control Technologies

Dear Mr. Kasunic:

Thank you for the opportunity to provide further information regarding requested exemptions 8A and 8B. We take from your questions that your office would like to ensure that the exemptions are limited to protecting legitimate security research. We wholeheartedly share this goal. However, we believe further limitations are unnecessary to achieve this goal because the exemptions as written are narrowly tailored to ameliorate the harms discussed at the hearing while protecting the interests of copyright holders.

In particular, both exemptions apply only “when circumvention is accomplished *solely* for the purpose of good faith testing, investigating, or correcting . . . security flaws or vulnerabilities.” (emphasis added). This limitation serves two important functions.

First, the limitation would exclude from the scope of the exemptions any circumvention undertaken for a purpose *other* than good faith security research. Any circumvention undertaken

even in part for a purpose *unrelated* to security research, such as committing copyright infringement, would not qualify for the exemptions.

Second, the limitation would require any circumventor to show that she undertook the circumvention *specifically* for the purpose of engaging in good faith security research. Thus, any circumventor who happened to stumble upon a security flaw during the course of a prohibited circumvention would be unable to improperly invoke the exemptions *ex post*.

The limitation would sufficiently prevent abuse of the requested exemptions. Indeed, the Register incorporated the same limitation into the substantially similar audio recordings exemption granted in the 2006 proceeding. By all accounts, the limitation has proven sufficient to guard against abuse of the audio recordings exemption, and nothing in the record suggests that the presently requested exemptions would be any more prone to abuse.

Because the limitation sufficiently addresses concerns about abuse, additional limitations would serve merely to chill legitimate, good faith security research. For example, the Joint Commentators have suggested limiting the requested exemptions to professional or academic security researchers. Such a limitation would exclude the contributions of many serious, careful, amateur security researchers, who often provide valuable data and insight to professional and academic researchers. The limitation would also force in-house and university to counsel to ensure that researchers fit within a potentially nebulous definition before proceeding with research projects, thus increasing the likelihood that projects would be rejected and valuable security research chilled.

Accordingly, we believe it is unnecessary to further limit the requested exemptions. Thank you for your continued consideration of our request.

Sincerely,

/s/

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Blake E. Reid¹
Harry A. Surden

¹ Blake E. Reid is a summer associate at Faegre & Benson LLP. Mr. Reid signs this letter in his own capacity and not on behalf of Faegre & Benson LLP. This letter does not reflect the opinions of Faegre & Benson LLP or any of its subsidiaries, assigns, or clients.