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September 8, 2009

BY EMAIL

Robert J. Kasunic, Esq.
Principal Legal Advisor
United States Copyright Office
101 Independence Avenue, SE
Washington, DC 20559-6000

Re: **Docket No. RM 2008-8**

Dear Mr. Kasunic:

This letter responds to your email of August 21, 2009, requesting that, on behalf of our client, the DVD Copy Control Association, Inc. ("DVD CCA"), I respond to follow-up questions that have arisen in light of the hearings and subsequent filings in this proceeding. On behalf of DVD CCA, we appreciate this opportunity to respond to these questions.

In relation to the questions in your email, the DVD CCA understands that the proposed quantitative restrictions raised in the attachment to your email are being contemplated as restrictions on exemptions that are otherwise defined in terms of the activities that are fair use, the nature of the work and the nature of user(s) involved. In other words, quantitative restrictions would not be intended as the only basis for an exemption.

Assuming DVD CCA's understanding is correct, however, DVD CCA does not believe that utilizing quantitative limits as a nonexclusive factor in defining a particular class of exempted works is a productive avenue for these rulemaking proceedings. Even as an additional factor, DVD CCA has serious concerns that the use of time limitations could, and almost certainly would, lead to misunderstandings and misuse. Determining whether a particular use is a "fair use" is a highly fact and

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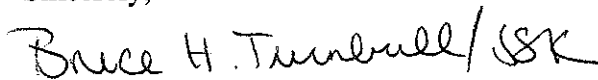
circumstance driven analysis, although popular myth has too often equated a time limited use to be necessarily "fair use."

Since short clips, or even still images from movies, have commercial value in and of themselves, any suggestion that use of a particular length or percentage portion of a work is acceptable for the exemption from circumvention prohibitions leads us to have serious concerns that that length or amount would become understood to be a form of "safe harbor" for users. Moreover, we believe that any attempt to define a class of works for an exemption to the general prohibition against circumvention of technical protection measures by time limits will muddle the inquiry into the separate elements of "particular class of works" and "non-infringing" uses that Section 1201(a) requires. Since the DMCA circumvention prohibition is a critical element in the distribution of valuable copyrighted content, any such understanding would seriously erode the protections intended by Congress for technological protection measures. Accordingly, DVD CCA respectfully suggests that should the Copyright Office decide to grant certain exemptions, that specific quantitative limitations not be stated as a factor in such exemptions. Rather, the requirement should be that any circumvention exemption be limited to the minimum amount necessary for the non-infringing use that is otherwise defined in the exemption granted by the Librarian in this proceeding.

* * * *

We appreciate the opportunity to respond to these questions and stand ready to respond to any further questions that you or others in the Copyright Office may have on the proposed exemptions.

Sincerely,



Bruce H. Turnbull
Counsel to the DVD Copy Control
Association, Inc.