

February 2, 2009

Office of the General Counsel
U.S. Copyright Office
James Madison Memorial Building
Room LM – 401
101 Independence Avenue, SE.
Washington, DC 20559-6000

Re: Docket No. RM 2008-8 Reply Comments to Comments Submitted Pursuant to the Copyright Office's Notice of Proposed Rulemaking for Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

Mr. Carson:

The American Intellectual Property Law Association (AIPLA) is pleased to offer reply comments to the initial comments the Copyright Office received in connection with the October 6, 2008 Notice of Proposed Rulemaking Regarding Exemptions to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies.

AIPLA is a national bar association whose more than 16,000 members are primarily lawyers in private and corporate practice, in government service and in the academic community. AIPLA represents a wide and diverse spectrum of individuals, companies and institutions involved directly or indirectly in the practice of patent, trademark, copyright, and unfair competition law, as well as other fields of law affecting intellectual property. Our members represent both owners and users of intellectual property.

Based on a review and analysis of the comments and proposed exemptions submitted in response to the Copyright Office's initial Notice and the current law, the AIPLA makes the following recommendations:

SUPPORT FOR CONTINUING CERTAIN EXEMPTIONS

AIPLA agrees that, for certain classes of work, exemptions to the Digital Millennium Copyright Act's ("DMCA") anti-circumvention provisions are warranted. AIPLA recognizes that several well-founded exemptions currently exist under 37 CFR 201.40(b) and supports the continuation of these exemptions. Several of the proposals concern classes of works currently subject to exemption, but differ in language from the present codification. Thus, the AIPLA supports the following proposals, to the extent the language is modified to match that of the current, corresponding exemption prior to enactment: (i) Proposal 1, which concerns a class of

"literary works" exempted under 37 CFR 201.40(b)(4); (ii) Proposal 4E, which concerns a class of "audiovisual works" exempted under 37 CFR 201.40(b)(1); (iii) Proposal 5D, which concerns a class of "computer programs" exempted under 37 CFR 201.40(b)(5); and (iv) Proposal 6, which concerns a class of "computer programs" exempted under 37 CFR 201.40(b)(3). The AIPLA further supports extension of the current exemptions not discussed in the published comments.

OPPOSITION TO CERTAIN PROPOSED EXEMPTIONS

AIPLA opposes proposals 8A and 11A. Proposed exemption 8A discusses an exemption for classes of "literary works, sound recordings and audiovisual works," which is already contained in USC 17 § 1201(j) and therefore need not be enacted. Proposed exemption 11A is an exemption for "Audio Visual Work released on DVD, where circumvention is undertaken solely for the purpose of extracting clips for inclusion in non-commercial videos that do not infringe copyright". The AIPLA opposes this proposed exemption because (i) the term "audio visual works" too broadly defines the category of works for which the exemption is sought; (ii) neither the proposed rule nor the Copyright Act defines the ambiguous term, "non-commercial video," used in the proposal; and (iii) the proposed rule fails to specify or limit the anti-circumvention protections which it affects, while the support materials only discuss DVD protected by CSS. The AIPLA therefore opposes this proposed exemption.

We appreciate the opportunity to provide these reply comments and would be pleased to assist the Copyright Office in the further examination of the issues related to the Notice of Proposed Rulemaking.

Respectfully

A handwritten signature in black ink, appearing to read "Q. Todd Dickinson", with a long horizontal flourish extending to the right.

Q. Todd Dickinson
Executive Director
AIPLA