

To: Copyright Office, Library of Congress
From: Melody Reinecke, Digital Media Assistant
Date: 2February2009

Subject: Triennial Rulemaking Proceeding of the Digital Millennium Copyright Act, Call for Comments - 37 CFR Part 201 [Docket No. RM 2008-8]. Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies.

To the Copyright Office;

I am writing comments to address the proposed classes of works for exemption that are detailed below. The access measures addressed adversely affect the ability to make non-infringing uses due to the prohibition of circumvention and the reasons are as follows:

1) 4A. “Commercially produced DVD’s used in face-to-face classroom teaching by college and university faculty, regardless of discipline or subject taught, as well as by teachers in K-12 classrooms.” Proponent: Gary Handman, Media Resources Center, UC Berkeley.

4A Comments: I support this exemption due to the fact that under Fair Use, short clips of commercially produced DVD’s are allowed in one-time, not-for-profit instances. Instead of capturing the clip from the DVD through the analog signal, the quality is improved enormously when capturing the digital signal. Since capturing the analog signal is legal, it is redundant to ban capturing short clips digitally when the intent is to use the clip in a Fair Use manner. I support this exemption only in not-for-profit, non-infringing, classroom Fair Use situations.

2) 4G. “Audiovisual works included in a library of a college or university, when circumvention is accomplished for the purpose of making compilations of portions of those works for educational use in the classroom by professors.” Proponents: Library Copyright Alliance and the Music Library Association.

4G Comments: I support this exemption due to the fact that under Fair Use, short clips of university library audiovisual works are allowed in one-time, not-for-profit instances. A compilation of the short clips does not infringe on Fair Use. Instead of capturing the clips through the analog signal, the quality is improved enormously when capturing the digital signal. Since capturing the analog signal is legal, it is redundant to ban capturing short clips digitally when the intent is to use the clip in a Fair Use manner. I support this exemption only in not-for-profit, non-infringing, classroom Fair Use situations.

3) 4H. “All audiovisual works and sound recordings ‘used in face-to-face classroom teaching by college and university faculty, regardless of discipline or

subject taught’ and regardless of the source of the legally acquired item.’

Proponent: Gail Fedak.

4H Comments: I support this exemption due to the fact that under Fair Use, short clips of all legally acquired digital items are allowed in one-time, not-for-profit instances. A compilation of the short clips does not infringe on Fair Use. Instead of capturing the clips from the legally acquired item through the analog signal, the quality is improved enormously when capturing the digital signal. Since capturing the analog signal is legal, it is redundant to ban capturing the works digitally when the intent is to use the clip in a Fair Use manner. The source of the item should be irrelevant if it is legally acquired. I support this exemption only in not-for-profit, non-infringing, classroom Fair Use situations.

4) 9A. “Audiovisual works delivered by digital television (“DTV”) transmission intended for free, over-the-air reception by anyone, which are marked with a “broadcast flag” indicator that prevents, restricts, or inhibits the ability of recipients to access the work at a time of the recipient’s choosing and subsequent to the time of transmission, or using a machine owned by the recipient but which is not the same machine that originally acquired the transmission.” Proponent: Matt Perkins.

9A Comments: I support this exemption. This particular issue is ambiguous in terms of the way the law is currently written. Currently, this situation begs the question of whether there is an issue of copy controls or access controls. In this situation, there is a point in time where there are no access controls in place, so the issue at that specific time is whether there is a copy control issue at hand. While the work is transmitting for free over-the-air for everyone, capturing this work should be allowed under Fair Use because there are no technological measures in place which prevent access. Which machine is used should be irrelevant as long as the same recipient is using the material in a non-copyright infringing manner.

The law does not currently explicitly address this situation and it would be advantageous to clarify exactly what an access control is. Currently, an access control is defined as “a technological measure that controls access to the work.” Due to the nature of technology, this is a subjective statement. The only solid example that I can think of that truly controls access to a work is when such work is password-protected or a paid subscription is required. Other than that, I cannot think of any work broadcasted over the television or internet that you cannot readily access in some form or another. This can be loosely compared with copying small amounts of material out of a book for classroom use. While the book can be copyrighted, it is legal to show a small portion of the legally obtained book under Fair Use. The basic use of the book or an internet/television clip is the same, but the format is the difference. I support this exemption only in not-for-profit, non-infringing, classroom Fair Use situations.

5) 11A. “Audiovisual works 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.” Proponents: Fred von Lohmann and Jennifer S Granick, Electronic Frontier Foundation.

11A Comments: I support this exemption due to the fact that under Fair Use, short clips of audiovisual works released on DVD are allowed in one-time, not-for-profit instances. Instead of capturing the clips through the analog signal, the quality is improved enormously when capturing the digital signal. Since capturing the analog signal is legal, it is redundant to ban capturing short clips digitally when the intent is to use the clip in a Fair Use manner. I support this exemption only in not-for-profit, non-infringing, classroom Fair Use situations.