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Re: Exemption to Prohibition on Circumvention of Copyright Protection Systems for
Access Control Technologies

In support of classes 7B, 7C, and 7G
February 10, 2012

Pursuant to the U.S. Copyright Office's request for comments "on proposals to exempt certain classes of works from the prohibition on circumvention of technological measures that control access to copyrighted works" as detailed and published in the Federal Register, Volume 76, Number 244, Tuesday, December 20, 2011, page 78866-78868, the Commenter, Martine Courant Rife, JD, PhD, is submitting comments in support of classes of works 7B, 7C, and 7G, as outlined and discussed below.

Commenting Party

Martine Courant Rife¹, JD, PhD, is a writing professor at a community college in Lansing, Michigan (Lansing Community College), where she teaches courses in first-year composition, accelerated basic writing, technical writing, argumentation, and digital authorship. Her research interests include copyright issues as they intersect with composition studies. Rife won the 2007 Society for Technical Communication's (STC) Frank R. Smith Outstanding Journal Article Award for "Technical Communicators and Digital Writing Risk Assessment" published in *Technical Communication*. Rife's forthcoming monograph with Southern Illinois University Press is based on her 2008 dissertation research, and is titled *Invention, Copyright, and Digital Writing*. Rife and Danielle Nicole Devoss, PhD, a Professor at Michigan State University are the editors of the recently published *Copy(write): Intellectual Property in the Composition Classroom* (2011, Parlor Press)², and are currently working on an edited collection titled *Cultures of Copyright*. Rife is also admitted to practice law in Michigan.

Martine's professional activities include serving as Junior and Senior Chair, 2010-2012 for the CCCC (Conference on College Composition and Communication) Intellectual Property Caucus. In 2009, Rife participated in Washington D.C. at the DMCA (Digital

Millennium Copyright Act) Rulemaking Hearings, Library of Congress. Rife also co-authored and organized CCCC's public comment submission to the U.S. Intellectual Property Enforcement Officer regarding The 2010 Joint Strategic Plan.

Classes of Works Supported

7B Audiovisual works on DVDs that are lawfully made and acquired and that are protected by the Content Scrambling System, where circumvention is undertaken for the purpose of extracting clips for inclusion in primarily noncommercial videos that do not infringe copyright, and the person engaging in the circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of the use.

and,

7C Audiovisual works that are lawfully made and acquired via online distribution services, where circumvention is undertaken for the purpose of extracting clips for inclusion in primarily noncommercial videos that do not infringe copyright, and the person engaging in the circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of the use, and the works in question are not readily available on DVD.

Both submitted by the Electronic Frontier Foundation,

as well as:

7G Audiovisual works (optical discs, streaming media, and downloads) that are lawfully made and acquired when circumvention is accomplished by college and university students or faculty (including teaching and research assistants) solely in order to incorporate short portions of video into new works for the purpose of criticism or comment.

Submitted jointly by: Peter Decherney, Katherine Sender, Michael Delli Carpini, International Communication Association, Society for Cinema and Media Studies, and American Association of University Professors.

Rationale

I write this letter in support of the above classes, reiterating that "the 2010 DMCA exemption for college and university professors . . . has truly aided the field of higher education" (DeCherney et al., p. 3). Here, I share my perspective as a community college teacher, with community colleges as the sites where nearly one half of

undergraduate students attend (<http://www.collegeboard.com/student/csearch/where-to-start/150494.html>). I offer some specific examples to emphasize the utility of the current exemption as expanded in 2010, and to further offer that the additional expansion proposed by the EFF in class 7C and Decherney et al. in class 7G is warranted, and if granted will be implemented responsibly by college teachers.

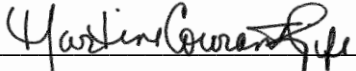
I agree with the EFF that “the creation of videos that include clips taken from lawfully obtained DVDs – is already widespread” (p. 38). During the last two academic years, a colleague and I have conducted two college-wide workshops titled “Legally ‘Hacking’ DVDs: Using the New DMCA (Digital Millennium Copyright Act) Exemptions for Teaching and Learning.” These workshops were well attended both times they were offered, and the participants ranged from across the disciplines – from science, chemistry, and astronomy, to social studies and economics. Faculty are eager to learn the perimeters of the exemption – and appreciative to know their practices are within the bounds of the law. These workshops are exemplary of other educational-focused events that illustrate the responsible way college professors have and will implement both the existing exemption, and the new exemption if it were to be expanded to include all college students and a larger range of media (i.e., the EFF’s proposed class 7C and Decherney et al.’s proposed class 7G). These professional development activities also show that the exemption is of great interest to college professors, and is being used to enhance the learning environment for our students.

Further illustrating the way in which the exemption is both used, and responsibly implemented, during the workshops we offered specific examples from Register Peter’s 2010 Recommendation were used to “teach” faculty the issues to be considered in order to use DVD clips within the exemption. In 2010 the Register suggested that noncommercial videos - fanfiction such as *Luminosity’s Women’s Work* and the remix political video by *ParkRidge47*, might be transformative enough to be Fair Use, especially because only small, minutes-long portions were used in relation to entire 120 minute movies, or because the remixed video was “used for a new and different purpose from the original” (p. 51). The Register also offered examples of video remixes that were less likely to be Fair Uses, since they used “multiple clips from the same motion picture” and “larger percentages” of a single motion picture (p. 51). *Luminosity’s Vogue/300* was one such remix described by the Register as “showing an extensive montage of scenes from the movie 300 mixed with Madonna’s sound recording, Vogue” (p. 51, footnote 187; See also Rife & DeVoss, 2012). In a typical faculty workshop, these examples are shown and then discussed with the framing question: “Which do you think is the fair use – which do you think is not?” Such ensuing discussion allows workshop participants to unpack the intricacies of Fair Use, and to learn the boundaries of and rationale behind the 2010 DMCA exemption. These kinds of learning activities,

constructed directly from examples derived from the rulemaking proceedings and recommendation, have and will continue to be used to responsibly share and implement whatever exemption is crafted this round, both with faculty and with students.

And thus, I would confirm my support for both the Electronic Frontier Foundation's proposed classes 7B and 7C, as well as the proposed class 7G offered by Decherney et al. It has been my experience that community college faculty are both very appreciative of, and actually using the exemption as determined in 2010. In the event this exemption is expanded, we would continue to implement it in a way that is both thoughtful and responsible. As the EFF states in its comments: "Removing that legal inhibition has done precisely what Congress intended when it created the exemption procedure: helped ensure that the strong protections of § 1201(a)(1) do not adversely affect non-infringing uses" (p. 56).

Respectfully Submitted



Martine Courant Rife, JD, PhD

References

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¹ The views expressed herein are only her own, and do not necessarily reflect those of the organizations or institutions with which she is associated.

² Shaun Slattery is also an editor of this edited collection.