

Petition for Proposed Exemption Under 17 U.S.C. § 1201

Item 1. Submitter and Contact Information

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Item 2. Brief Overview of Proposed Exemption

We seek a minor broadening of a previous exemption, namely "Computer programs protected by dongles that prevent access due to malfunction or damage and which are obsolete". This is very close, but not quite sufficient, to cover the case in point so we ask for an explicit inclusion in the list of exemptions.

- 1) The case in question concerns Ensoniq Paris, a system of hardware and software requiring installation on a computer host. Paris systems were last sold commercially in 2000 and the software for Paris was last updated in 2001 and is now no longer commercially available, nor functional unmodified on any modern computers running on any commercially available operating systems.
- 2) Paris contains two major functional components, the Paris hardware (the "hardware", manufactured at different times by Emu and Ensoniq), and the software application (the "Paris app", manufactured by Intelligent Devices). The hardware provides DA/AD conversion, and a control surface (faders, like an audio mixer) which permits audio to be recorded into the software application. The hardware cannot be operated without major loss of functionality (see below for details on this) without the Paris app; the Paris app does not boot without attached Paris hardware. They are designed as a single system.
- 3) In short, the hardware, while not specifically a "dongle", duplicates a dongle's restriction of functionality.
- 4) Furthermore, the Paris app is also copy protected using a now-obsolete PACE copy protection scheme requiring a challenge code which is provided by the manufacturer, Intelligent Devices. Intelligent Devices has now stated that it will no longer provide these challenge codes.
- 5) The last operating system the Paris app was qualified to operate on was Windows 98
- 6) Further, Paris systems utilize a proprietary binary project file format (.ppj) which is unreadable by any other known system. Requests to release or document the file format have been ignored.
- 7) Further still, Paris systems use a proprietary audio format for the actual recorded audio files
- 8) Further still, the Paris app, which was released in 2001, was left in "3.0" form (there has never been a 3.01 update to address bugs). Notably for this submission the export formats that might otherwise allow interoperability (OMF; midi; render tracks as audio) all

contain crippling bugs ranging from “export possible but requires extreme vigilance” (“render tracks as audio” randomly omits audio segments) to completely broken (there is no evidence that any user ever managed to make Paris’ putative “OMF export” function successfully between 2001-2011).

- 9) The Paris system has been in use for over fifteen years and many commercial studios, have recorded using it, at times to record artists as prominent as Sting, Sarah McLachlan or Marcus Miller. Since their music has been recorded in a proprietary format, these studio users are forced to maintain a functioning Paris system in order to perform due diligence for their clients or even to have access to their own original music. This is now an impossible task without considerable ingenuity for a “perfect storm” of reasons: the music must be played back using a Paris system but the hardware needs the software to run, the software needs the hardware to open files, the software cannot run as released on operating systems past Win 98. Should the user practice every form of due diligence imaginable and maintain a functioning fifteen year old computer with an operating version of Paris, any failure in the aging PC will require obtaining an equally old computer - at which point due to the termination of the provision of challenge codes they will now no longer be able to authorize their software.

Paris users have been diligent and resourceful in overcoming some of these limitations while still respecting the PACE copy protection scheme and resisting the temptation to “reverse engineer” the file format to secure their access to their own and their clients’ projects. Skilled coders in the user community have created intermediary drivers to permit the Paris app to operate on more modern computers.

But this situation has already caused irreparable harm to those whose libraries of material became inaccessible with the death of their Paris systems and simply walked away from smaller or larger bodies of work because there was no alternative.

To sum up:

- 1) The PARIS system has been obsolete since 2001, the year of its last update
- 2) Paris no longer runs on modern operating systems (64 bit)
- 3) Intelligent Devices has stated that they will no longer release PACE challenge codes for the PARIS software, giving final confirmation to the assertion of obsolescence.
- 4) The PARIS system has been declared obsolete at the only two major PARIS community sites on the internet, the Paris Wiki and The Paris Forums. This declaration, which forms part of the Wiki’s introductory paragraph, has remained unchallenged by Intelligent Devices, Ensoniq or any other putative stakeholder for four years.
- 5) The system’s closed file format, requiring hardware and software, presents a damaging block to the abilities of artists, composers and engineers to access their own intellectual property, namely their created works. When their system fails – that’s it.
- 6) The system’s PACE copy protection system has long been accused of being a major source of system destabilization. Anecdotal reports from early in the DAW’s history suggest strongly that the removal of the now-long-obsolete PACE copy protection removes many potentially crippling BSOD (“blue screen of death”, or total system failure) issues.

- 7) PARIS software and hardware systems require installation on a host computer. The last operating systems PARIS was qualified to run on were Windows 2000 (obsolete in 2002) and Mac OS9 (obsolete in 2003). Unmodified PARIS systems cannot be used on modern PCs. Within the PARIS community a number of coders have taken on the responsibility of developing drivers first for Win XP, then on modern multicore systems, then on Windows Vista, Windows 7, 8 and 9, all while carefully and diligently respecting the PACE copy protection and declining “reverse engineering” either the released PARIS application or the associated proprietary file formats. Without this vastly time-consuming intervention user intervention most PARIS systems would arguably now be in landfill instead of recording music. Intelligent Devices was notified directly of all of these developments without any objection.
- 8) Intelligent Devices has been essentially unresponsive to requests to release an update, modernize the drivers, sell the source code, release the file format or release a file transfer utility. Users do not feel there is any reasonable expectation of relief through that course.

PRIVACY ACT ADVISORY STATEMENT Required by the Privacy Act of 1974 (P.L. 93-579)
The authority for requesting this information is 17 U.S.C. §§ 1201(a)(1) and 705. Furnishing the requested information is voluntary. The principal use of the requested information is publication on the Copyright Office website and use by Copyright Office staff for purposes of the rulemaking proceeding conducted pursuant to 17 U.S.C. § 1201(a)(1). NOTE: No other advisory statement will be given in connection with this application. Please keep this statement and refer to it if we communicate with you regarding this petition.

Item 3. Copyrighted Works Sought to be Accessed

The copyrighted work sought to be accessed is a computer program. The software was distributed via CD ROMS and on the Internet.

Item 4. Technological Protection Measure

The PACE copy protection system works by generating a system specific set of words called a “challenge.” This challenge is based upon the specific hardware in a computer. If the hardware changes sufficiently, a new challenge will be generated and the user will have 7 days in which to enter a correct “response.” The challenge is emailed to the software provider (Intelligent Devices) and a “response” is cryptographically generated such that it matches the specific “challenge.” The response is emailed back to the end user, and it is entered into the program. If the challenge and response match (based on a secret algorithm), the end user is given access to the program.

Item 5. Noninfringing Uses.

The non-infringing use is simply using the application for which the end users have paid for on a PC of their choosing. End users include sound engineers, song writers, and others who have an interest in recorded sound. Since response codes will be no longer generated after December of this year, as PC hardware inevitably fails, increasing number of PARIS users will not be able to access the system for which they have paid when they are unable to access the PARIS 3.0 application on a new PC.

Also, the PACE copy protection embedded in the PARIS 3.0 application is not compatible with 64 bit Windows versions. An additional noninfringing use is simply to run their recording system on a modern 64 bit operating system.

Item 6. Adverse Effects.

After December of this year, PARIS users who choose to or are forced to because of equipment failure will not be able to run the PARIS 3.0 application. This means they will not be able to access previously recorded material (which they may be required to modify by a client) or make any new audio recordings. They will no longer be able to open their recording session files or utilize their PARIS Systems they have paid for. The users will be locked out of their systems.

Professional PARIS users will not be able to accept that risk. They will be forced to immediately switch to newer systems, at significant cost.

Currently, the inability to run PARIS 3.0 on a modern 64 bit windows OS means that the PARIS users cannot access the full abilities of modern computer systems. This could mean that they would need to run two PCs in order to use required newer software, such as software samplers, with their PARIS system, creating an unnecessary financial burden. Software samplers can

access the extra memory available under a 64 bit OS, and they have revolutionized audio production. Under a 32 bit OS, there isn't enough memory to use them.

The PACE copy protection scheme will not work on Windows 7 64 bit and above, and by Intelligent Devices refusing to provide new PACE response codes, the number of working PARIS systems running PARIS 3.0 will steadily decline as PC hardware fails and new codes are required.

Intelligent Devices has been unresponsive to repeated and persistent requests to release an update, modernize the drivers, sell the source code or release the file format. We do not feel there is any reasonable expectation of relief through that course.

THUS the PARIS user community seeks the following access:

- 1) The ability to circumvent the PACE copy protection from what is undeniably an obsolete system (the hardware has not been sold since 2001) because the by the time this rule will be in force, response codes to unlock the software required to use the software and the hardware will not be available.
- 2) The ability to circumvent the PACE copy protection from what is undeniably an obsolete system (the hardware has not been sold since 2001) because this software dongle prevents PARIS users from taking advantage of modern computer systems with more RAM while providing no benefit to the copyright holder.