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June 29, 2015

VIA E-MAIL ONLY (2015ADMAT@LOC.GOV)

Jacqueline C. Charlesworth
General Counsel and Associate Register of
Copyrights
U.S. Copyright Office
Library of Congress
101 Independence Ave SE
Washington, DC 20559-6000

Re: Docket No. 2014-7, Exemptions to Prohibition Against Circumvention of Technological Protection Measures Protecting Copyrighted Works, Class 5

Dear Ms. Charlesworth:

On behalf of the Joint Creators and Copyright Owners, I am pleased to provide this response to your letter of June 3, 2015 regarding Proposed Class 5 – Audiovisual works – derivative uses – multimedia e-books.

1. Technological Issues Related to Creating Multimedia E-Books

We are informed that counsel for DVD CCA and AACCS LA has inquired into the state of the marketplace with respect to (i) the availability of screen capture technology for use with Apple/Mac operating systems; (ii) whether screen capture technologies are capable of capturing video from Blu-Ray discs; and (iii) whether the policies of e-book publishers and distributors allow for the incorporation of HD quality clips into multimedia e-books. We have not engaged in similar research. We thus respectfully refer you to their letter(s).¹

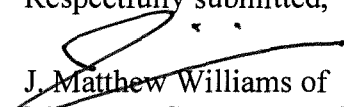
Our view is that the current record does not establish that multi-media e-book authors need access to HD footage. The testimony submitted at the hearing on this Proposed Class is that publishers and distribution platforms certainly do not demand or require use of HD clips. Accordingly, based on the current record, we do not think that there is any basis to extend the exemption to cover circumvention of AACCS on Blu-Ray discs.

¹ With respect to the question about whether Apple computers can be used to engage in screen capture, we believe it is important to note that “[i]n previous rulemakings, exemptions have been denied ... because although a user might have been prevented from engaging in a noninfringing use of a work using a particular device, the user could engage in the same noninfringing use of the work using a different device.” 2012 Recommendation at 220 (quoting 2006 Recommendation).

2. Request for Information on Current E-Books that Include HD Clips

In your letter, you stated that “[i]t would also be helpful for parties to submit information identifying current e-books that include HD clips.” Although we agree that it would have been helpful for the proponents of the exemption to submit such examples when they had three opportunities to do so in writing earlier in this proceeding, in addition to the hearing, our view is that it is too late for them to do so now. To the extent that submitting examples of multimedia e-books that contain HD footage would have helped the proponents meet their burden of establishing that the prohibition on circumvention is having a substantial adverse impact, they have failed to do so.

Respectfully submitted,


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