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UNITED STATES COPYRIGHT OFFICE



**Long Comment Regarding a Proposed
Exemption Under 17 U.S.C. § 1201**

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ITEM A. COMMENTER INFORMATION

Advanced Access Content System Licensing Administrator, LLC

The Advanced Access Content System Licensing Administrator, LLC (“AACS LA”), is a cross-industry limited liability company with its principal offices in Beaverton, Oregon. The Founders of AACS LA are Warner Bros., Disney, Microsoft, Intel, Toshiba, Panasonic, Sony, and IBM. AACS LA licenses the Advanced Access Content System (“AACS”) technology that it developed for the protection of high definition audiovisual content distributed on optical media. That technology is associated with Blu-ray Discs (“BDs”).

As ultra-high definition products are entering the marketplace, AACS LA has developed a separate technology for the distribution of audiovisual content. This technology is identified as AACS2 and not AACS 2.0. This distinction in nomenclature is significant as the latter would suggest that it replaced AACS distributed on Blu-ray discs. It has not. AACS2 serves only audiovisual content distributed on Ultra HD Blu-ray discs, which will not play on (HD) Blu-ray players. AACS LA has joined with DVD CCA in filing an opposition to class 1 where the facts and arguments are nearly identical. AACS LA is now filing this separate opposition to address the proposals as they relate to Ultra HD Blu-ray discs and the circumvention of AACS2.

AACS LA is represented by the attorneys listed below.

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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 Web site and use by Copyright Office staff for purposes of the rulemaking proceeding conducted under 17 U.S.C. § 1201(a)(1). NOTE: No other advisory statement will be given in connection with this submission. Please keep this statement and refer to it if we communicate with you regarding this submission.

ITEM B. PROPOSED CLASS ADDRESSED

This comment addresses Proposed Class 1: Audiovisual Works—Criticism and Comment.

ITEM C. OVERVIEW

AACS LA opposes the creation of an exemption for any of the activities that would be permitted under the current exemption and as that exemption could be further modified by the proposals in this proceeding as so far as the exemption would permit the circumvention of AACS2, which is employed to protect ultra high-definition content distributed on Ultra HD Blu-ray discs.

ITEM D. TECHNOLOGICAL PROTECTION MEASURE(S) AND METHOD(S) OF CIRCUMVENTION

AACS2 is an encryption-based technology, recognized as a technological protection measure in prior iterations of this proceeding.

ITEM E. ASSERTED ADVERSE EFFECTS ON NONINFRINGEMENT USES

I. The Current Exemption Does Not Extend to AACS2 on Ultra HD Blu-ray Discs and the Proponents Have Not Identified AACS2 in this Proceeding

A. Ultra HD Blu-ray Technologies Are Fundamentally Different from (HD) Blu-ray Technologies

As explained during the hearings for the last proceeding (see quoted materials, below), the technology (format) for Ultra HD Blu-ray audiovisual content, the storage media for such content (Ultra HD Blu-ray discs), and the content protection technology (or TPM) for such content as stored on Ultra HD Blu-ray discs (AACS2) are all separate and distinct from the technology (format) for (HD) Blu-ray audiovisual content, the storage media for such content (Blu-ray discs), and the content protection technology (or TPM) for such content as stored on Blu-ray discs (AACS or AACS1). The format and storage media for both the original (HD) Blu-ray disc and Ultra HD Blu-ray disc are explained on the Blu-ray Disc Association website.¹ A critical point is that Ultra HD Blu-ray discs will not play on players equipped with only the original (HD) Blu-ray disc capability. This is true both because the technologies for the content format, storage medium, and content protection are incompatible with the earlier HD technologies.

¹ The website is at <https://us.blu-raydisc.com/>.

A news article in *Twice* provides a brief description of the key differences between the formats.² It notes, Ultra HD content has up to four times the number of pixels of “full HD” 1080P content (hence, the popular moniker, “4K”). There are several other differences between the formats, including the use of high dynamic range (“HDR”), a doubling of the colors (from 35 percent of the colors visible to the human eye to 76 percent of such colors), and an increase of the playback capability from 24 frames per second to 60 frames per second. As these examples show, the Ultra HD Blu-ray format has a number of important differences from the (HD) Blu-ray format, with the 4K label being an inadequate marketing short-hand.

The motion picture industry insisted on a significant improvement in the technology used to protect Ultra HD motion picture content.³ AACS LA was challenged by the Blu-ray Disc Association to meet or exceed those industry requirements in a content protection system for the protection against unauthorized uses of motion picture content from Ultra HD Blu-ray discs. That resulted in a two-year effort to produce a state-of-the-art content protection system for the Ultra HD Blu-ray format, culminating in the launch of AACS2 Technology in September 2015. There are entirely separate license agreements, compliance and robustness rules, and technical specifications for AACS2.⁴

Blu-ray players incorporating only AACS1 Technology will not play Ultra HD Blu-ray discs protected with AACS2 Technology and cannot be “upgraded” to play such discs. The two systems exist in parallel, serving two different markets. It is no more correct to equate AACS2 protection and Ultra HD Blu-ray disc technology with AACS1 protection and (HD) Blu-ray disc technology than it would have been to equate the AACS1 protection and (HD) Blu-ray disc technology with CSS protection and DVD technology.

B. The Record from the Last Proceeding Excluded AACS2 and Ultra High-Definition Content Distributed on Ultra HD Blu-ray discs

The last rulemaking clarified on the record that the current exemptions do not extend to AACS2 or otherwise permit the circumvention of AACS2 protection of ultra high-definition content distributed on Ultra HD Blu-ray discs.

² Joseph Palenchar, *BDA Launches Ultra HD Blu-ray Website*, *Twice* (Nov. 25, 2015) available at <https://www.twice.com/product/bda-launches-ultra-hd-blu-ray-website-59579> (last visited Feb. 12, 2108).

³ See Enhanced Content Protection (ECP), MovieLabs available at <http://movielabs.com/solutions-specifications/enhanced-content-protection-ecp/>.

⁴ They can be found at the AACS LA website at <http://www.aacsla.com/license/>.

1. The Joint Filmmakers Established on the Record that Their Request Did Not Extend to the Circumvention of AACS2 Technology for Ultra HD Blu-ray Discs

At the May 20, 2015 hearing in Los Angeles, the witnesses established that the filmmakers' request to circumvent did not extend to the circumvention of the then-still-contemplated distribution of Ultra HD content on Ultra HD Blu-ray discs. Turnbull testifying on behalf of AACS LA said

88:23 Turnbull: It is our understanding, and we would absolutely want the office to take this understanding, that the request that has been made, even as applicable to Blu-ray, does not in fact extend to 4K or ultra high definition content and to the technologies that are about to be deployed to make that content available, including a new, entirely new, AACS technology that would be deployed as part of that system this fall for Blu-ray. It's a different product. It's a different format. And I would not want any confusion were you to take the unfortunate position of granting an exemption with regard to Blu-ray that UHD would be incorporated.

89:18 MR. DAMLE: Just a question about that. Is that new technology going to be called "Blu-ray"?

89:21 MR. TURNBULL: My understanding -- I am not sure that the marketing people are done yet, but my understanding is that trademark term is "Ultra HD Blu-ray."

89:25 MS. CHARLESWORTH: That will be nice and confusing next time around.

90:2 MR. TURNBULL: And the AACS technology will use "AACS" in its name but will have indicators that --

90:5 MS. CHARLESWORTH: Just to be clear, we do not understand the proposal to include ultra HD or 4K, Mr. Hilkert.

90:9 MR. HILKERT: Not to step on your time. I just wanted to clarify, we are not seeking ultra HD and our mission of 4K is to talk about the fact that HD in the contemporary system that we operate in is the standard.

90:14 MR. TURNBULL: I understand --

90:15 MS. CHARLESWORTH: We now have a three-way agreement on one issue. So we made progress.

2. Proponents for Derivative Uses Conceded on the Record Their Request Did Not Extend to Ultra HD Content Distributed on Ultra HD Blu-ray Discs.

At the May 28, 2015 hearing in Washington, DC, the proponents on the panel for derivative uses such as remix artists conceded that their request did not include Ultra HD content distributed on Ultra HD Blu-ray discs. That panel included Ms. McSherry from EFF, a current proponent, and Turnbull again representing AACCS LA.

273:24 MS SMITH: Ms. McSherry, going back to what you said about technology evolving, I just wanted to be clear. Do you conceive this proposal as potentially encompassing ultra HD Blu-ray if Blu-ray were granted or would that be different?

274:4 MS. McSHERRY: I'm not sure of the technical difference between ultra-HD, Blu-ray and regular Blu-ray.

274:7 MS. CHARLESWORTH: One, I mean I think one is HD and one is ultra-HD.

274:9 MS. McSHERRY: Oh, I see. Okay. Thank you. 1 (Laughter.)

274:12 MS. CHARLESWORTH: That's my understanding.

274:14 MS. McSHERRY: All blu -- no, no, then all Blu-ray all the time.

274:16 MS. CHARLESWORTH: It took me a week to learn that but here I am.

274:18 MS. McSHERRY: Thank you. I think the way we've crafted is that it covers Blu-ray in all of its forms.

274:21 MR. TURNBULL: Okay. Let me --

274:22 MS. McSHERRY: Does that --

274:23 MS. CHARLESWORTH: Mr. Turnbull.

274:24 MR. TURNBULL: Thank you. We would object to any inclusion in this proceeding the ultra-HD Blu-ray format. It is a format that is completely different from HD Blu-ray. It is going to be protected using a technology which is based on AACCS but is going to itself be very different from the existing AACCS technology. There is no evidence in the record whatsoever of harm having to do with ultra-HD Blu-ray.

275:8 MS. SMITH: Is it out yet?

275:9 MR. TURNBULL: No.

275:10 MS. SMITH: Okay.

275:11 MR. TURNBULL: It's not and so, you know, I hope we can limit the -- and when this was raised in Los Angeles in relation to the documentary and other filmmakers, their answer very quickly was "no, no, no, we're not talking about that" and I would hope that would be the case here.

275:18 MS. CHARLESWORTH: I mean, Ms. McSherry, can -- I mean Mr. Turnbull's represented there's really nothing in the record on this forthcoming format. I mean do you think -- so that we -- are you willing to concede that at this point, that's not what you mean; when you're talking about Blu[-]ray, you're talking about the more traditional HD Blu-ray?

276:1 MS. McSHERRY: Well, I would absolutely concede that we could not have built a record on a technology that is not yet available so, no -- so will concede that. I mean I think that, you know, look, in an ideal world, you know, we would have a forward-thinking exemption that actually would adapt for that because the same arguments and the same problems that we're talking about here are going to apply. There will not be a distinction but, you know, I suppose if we need to come back in three years and talk about ultra-HD Blu-ray and whatever the next one is and the next one, you know, we can do that.

276:14 MS. CHARLESWORTH: I think you'll probably be doing that.

Notwithstanding the Copyright Office's prediction, the proponents have not requested that the current exemption extend to AACS2 or Ultra HD content distributed on Ultra HD Blu-ray discs.

C. The Proponents Proposed Modifications to the Existing Exemptions Do Not Include Extending the Current Exemption to Ultra HD Content on Ultra HD Blu-ray Discs

1. None of the Petitions Identified AACS2 on Ultra HD Blu-ray Disc as Technological Measure They Seek to Circumvent

In this proceeding, proponents did not identify AACS2 or Ultra HD Blu-ray discs in their petitions. The Register initiated this rulemaking with the Notice of Inquiry and Request for Petitions, which instructed, "Those seeking to engage in activities not currently permitted by an existing exemption, including activities that expand upon a current exemption, may propose a new exemption"⁵

(a) The Joint Filmmakers' Petition

In its petition, the Joint Filmmakers explicitly stated that its petition sought to modify the current exemption in two ways.

⁵ 82 Fed Reg. 29804, 29807 (June 30, 2017) (Notice of Inquiry).

In addition to our July 31, 2017 petition to renew the temporary exemption for documentary filmmakers making fair use of copyrighted works, codified at 37 C.F.R. § 201.40(b)(1)(i), the above-referenced petitioners additionally petition the Office to modify that exemption by:

(1) Removing the term “documentary” in the limitation codified at 37 C.F.R. § 201.40(b)(1)(i), which states that circumvention be undertaken for use in documentary filmmaking; and

(2) Removing the limitations in 37 C.F.R. § 201.40(b)(1)(i)(A) and (B) that refer to screen-capture technology.

The Joint Filmmakers do not however petition to modify the current exemption to extend to the circumvention of AACCS2 or to Ultra HD content distributed on Ultra HD Blu-ray discs.

(b) EFF, OTW and NMR’s Petition

EFF, OTW and NMR, whose representative participated in the panel on derivative uses in the last proceeding during which the exchange quoted above occurred, petitioned only to streamline the current exemption by removing the references to type of users, which they believe to be confusing and too narrow. They made no reference to expanding the current exemption to circumvent AACCS2 or otherwise to content distributed on Ultra HD Blu-ray discs.

(c) Joint Authors’ Petition

The Joint Authors petitioned to modify the current exemption to remove the current limitations that restrict the exemption to only nonfiction works focused on film analysis. According to the petition, the “other underlying aspects of the exemption should remain the same or similar to those in the current temporary exemption.” They did not suggest those aspects include the circumvention of AACCS2 or otherwise content distributed on Ultra HD Blu-ray discs.

(d) BYU’s Petition

BYU petitioned for an “expansion of the current exemption for motion pictures . . . for educational uses.” Those expansions are

to: (a) cover uses where circumvention is undertaken to facilitate performance of motion pictures in the course of face-to-face teaching activities, . . . ; (b) cover use of more than short portions of motion picture excerpts; (c) cover uses beyond film studies or other courses requiring close analysis of film and media excerpts; and (d) clarify that the use of screen-capture technology does not constitute circumvention.

BYU did not petition to expand the current exemption to extend to the circumvention of AACCS2 or otherwise to content distributed on Ultra HD Blu-ray discs.

(e) Joint Educators' Petition

The Joint Educators petitioned for a modification of the current exemption that permits circumvention of CSS, AACS, and TPMs used in transmission of motion picture content for use in certain massive open online courses (MOOCs). “This modification proposes that the exempted use of motion pictures extend to *all* online educational institutions, and no longer be limited by restrictions drawn from the TEACH Act.” (emphasis in original). The Joint Educators did not petition to extend the exemption to the circumvention of AACS2 or to content distributed on Ultra HD Blu-ray discs.

2. The Register Did Not Identify Any of the Petitions as Addressing AACS2 or Ultra HD Blu-ray Disc Technologies

In issuing the Notice of Proposed Rulemaking, the Copyright Office noted that the new petitions sought to expand the current exemptions for DVDs and Blu-ray discs.

Several petitions seek expansion of existing exemptions for circumvention of access controls protecting excerpts of motion pictures on DVDs, Blu-Ray discs, and digitally transmitted video for purposes of criticism and comment by various users, including creators of noncommercial videos, college and university faculty and students, faculty of massive open online courses (“MOOCs”), documentary filmmakers, and for multimedia e-books offering film analysis.

The statement obviously does not reference motion pictures distributed on UHD Blu-ray discs.

According to the Copyright Office, the Joint Filmmakers, like other proposals, seek removal of the “documentary” limitation in the current exemption for uses in documentary films (codified at 37 CFR § 201.40(b)(1)(i)). Most importantly, in reviewing the specifics of the petitions, the Copyright Office did not note that the Joint Filmmakers or any other petitioners were seeking to expand the exemption to circumvent AACS2 or to Ultra HD content distributed on Ultra HD Blu-ray discs.

3. Proponents' Initial Comments Do Not Target AACS2 or Ultra HD Content Distributed on Ultra HD Blu-ray Discs

The Notice of Rulemaking instructed, “Proponents of exemptions should present their complete affirmative case for an exemption during the initial round of public comment, including all legal and evidentiary support for the proposal.” Proponents had to submit their case on this “Long Form,” on which Item D specifically requests proponents to identify the Technological Protection Measure their proposals would circumvent. None of the proponents have identified AACS2 or content distributed on Ultra HD Blu-ray discs.

(a) Joint Filmmakers' Initial Comments

The Joint Filmmakers identified the technical protection measure to be circumvented would be AACS on Blu-ray discs. Initial Comments at 9. They state, “Like the current exemption, the modified exemption will permit circumvention, in certain circumstances, of AACS on Blu-ray discs.” The comments further identified the last rulemaking as the basis that AACS constitutes a TPM. *Id.* (“[B]een previously recognized by the Register as a TPM subject to the DMCA because it “effectively controls access” to content by requiring the “application of information”—namely, encryption keys—to gain access to the work.”).

(b) EFF, OTW and NMR's Initial Comments

The initials comments identify solely for “Blu-ray discs, the Advanced Access Control System.” Comments at 3.

(c) Joint Authors' Initial Comments

The Joint Authors identify the TPM to be “Advanced Access Content System (AACS) on Blu-Ray Discs.” Comments at 5. They further state that the exemption would be premised on the current exemption, “Like the current exemption, the modified exemption will permit circumvention, in certain circumstances, of AACS on Blu-ray discs.” *Id.*

(d) BYU's Initial Comments

BYU does not identify any specific technology, but it states, “technological protection measures (TPMs) employed on . . . Blu-ray discs” and to be the same that the Register identified in the last rulemaking. Comments at 2.

(e) Joint Educators' Initial Comments

The Joint Educators identify “Advanced Access Content System (AACS)” claiming it to be “the successor to CSS and is the standard TPM on Blu-Ray Discs.”

In light of the above, none of the proponents have identified AACS2 or even attempted to describe a technological protection measure employed to protect Ultra HD content distributed on Ultra HD Blu-ray discs.

II. Proponents Must, But Have Not, Put Forward an Independent and Sufficient Record to Show A Need for Noninfringing Use of Ultra HD Content Distributed on Ultra HD Blu-ray Discs and for the Circumvention of AACS2 Technology

The very significant picture quality differences (not just the technical details but the real-life viewing experience) for Ultra HD Blu-ray disc content and the substantial technology differences between AACS1 and AACS2 demand that proponents of circumvention exemptions put forward an independent record justifying the need for an exemption applicable to AACS2 and Ultra HD Blu-ray discs.

In prior proceedings, the Register's recommendations have stressed the need for proponents to demonstrate their need for the picture quality offered by DVD or Blu-ray technology, and the Librarian has not granted exemptions where proponents have not made their case for such a need. Even in the exemptions that have been granted, the use of the exemption has been uniformly conditioned on the user concluding that he/she actually needs the high quality that is available only through circumvention of the identified technologies. In this proceeding, the proponents have brought forward no evidence of the need for the high quality from copies of Ultra HD motion pictures distributed on Ultra HD Blu-ray discs.

A. Joint Filmmakers Refer to 4K and UHD But Make No Case for a Need for Such Quality or the Need to Circumvent AACS2 Technology Protecting Ultra HD Content on Ultra HD Blu-ray Discs

Only the Joint Filmmakers even mention ultra high definition, Ultra HD or 4K. None of these statements make a case for the need for Ultra HD content obtained through circumvention of AACS2 technology protecting Ultra HD content on an Ultra HD Blu-ray disc. And it is critical to recall that the change to the existing exemption that the Joint Filmmakers' filing supports is to extend the existing exemption to cover all types of films, not just documentaries. Since the existing exemption, by their own direct admission in the prior proceeding, is limited to HD Blu-ray and does not include Ultra HD Blu-ray, a filing in support of an extension of the "use" coverage of existing exemption cannot be read to justify also extending the type of works to be covered in an expanded exemption. Regardless, the references to "4K" and "Ultra HD" in the Joint Filmmakers' materials do not amount to the kind of evidentiary case that is required for an exemption extending to Ultra HD content and circumvention of AACS2 technology protecting Ultra HD content on Ultra HD Blu-ray discs.

1. The Only Reference to a Work in “4K” Is Erroneous

The first reference is a confusing reference to a “4K” film in relation to Miller’s potential use of “*Mr. Smith Goes to Washington, which is digitally encrypted in 4K on a Blu-ray disk.*” Comments at 17 (quoting text from Miller’s letter included in the appendix). In the letter, Miller includes a link to Amazon that is retailing the copy of the work that he would circumvent.⁶ A closer examination of the work reveals it to be the 75th Anniversary Edition that is distributed on Blu-ray meaning it is only high definition (not Ultra HD). As far as 4K, the Blu-ray was apparently mastered from a 4K edition of the film; (i.e., the quality of the master was 4K). A review of the 75th Anniversary Edition confirms that it is indeed only Blu-ray quality.⁷ It notes

Sony has done a complete restoration on *Mr. Smith Goes to Washington* in 4K and transferred the results to Blu-ray in a 1080p AVC encodement. Their results paid off, because *Mr. Smith* looks beautiful. The transfer is clean and with excellent contrast. We get only the occasional wavering of detail and heightening of grain and film softness, which is to be expected given a film of this vintage.

This is the only reference to an actual work said to be in “4K” and, as shown, the statement that the work was in 4K on Blu-ray was a mistake.

2. References to 4K Digital Projection in U.S. Theaters Is Used to Support the Need for HD Blu-ray Content

The comments later mention 4K as the “standard” for film projection in U.S. movie theaters. Initial Comments at 21. This, however, was raised in the context of arguing for access to Blu-ray.

The need for filmmakers to have access to high quality content from Blu-ray and online forms of video has never been more necessary than it is now. 4K production and distribution has become a dominating force in the video content industry, as over 70% of movie theaters in the US now use digital projection in 4K.⁹¹ Independent filmmakers need the ability to access high-quality content to meet the requirements of distributors.

⁶ <https://www.amazon.com/Washington-4K-Mastered-UltraViolet-Included-Digibook/dp/B00N5708NE>. It is worth noting that this link is to an edition of the movie that was released in December 2014, several months before Ultra HD Blu-ray was launched.

⁷ Brandon A. Duhamel, *Mr. Smith Goes to Washington (75th Anniversary) Blu-ray Book Review*, TheaterByte (Nov. 26, 2014) available at <https://www.theaterbyte.com/bluray-uhd-reviews/mr-smith-goes-to-washington-blu-ray-book-review.html> (last visited Feb. 6, 2018).

Although the Joint Filmmakers are technical experts who must understand the difference between “Blu-ray” and “4K” (and presumably Ultra HD Blu-ray with characteristics beyond 4K alone), the comments do not argue they must access Ultra HD content for the distribution requirements, just that they need “high quality content from Blu-ray” to meet those requirements.

3. Morrisette Letter’s Discussion of Ultra HD Content Does Not Make the Case for Access to Ultra HD Content Through Circumvention of AACS2 Technology Protecting Ultra HD Content on Ultra HD Blu-ray Discs

Although the main body of the Joint Filmmakers’ comments contains no request for access to Ultra HD content generally and certainly no request to be permitted to circumvent AACS2 Technology protecting Ultra HD content distributed on Ultra HD Blu-ray discs, one of the principals of the organizations supporting the Joint Filmmakers’ submission does discuss Ultra HD in a letter appended to the Joint Filmmakers’ comments. By itself, that letter cannot be read to create a request that was not made in the initial circumvention request or in the main body of the Joint Filmmakers’ comments. Even if it were viewed as such a request, the letter is both insufficient on its face and undermined due to inaccuracies in certain of its statements.

After discussing the technical differences between 4K resolution and lower quality resolutions and the fact that independent filmmakers are making films in “4K,” the letter stresses the need to “acquire at least HD (1080) content” and then makes a single reference to a need for “HD and UHD content” from “Blu-ray discs and online sources.” The full text of the passage from the letter is as follows:

As a result, independent filmmakers will be at a distinct disadvantage if they cannot acquire at least HD (1080) content to include in their 4K productions. Thus, the urgent need for an exemption that allows filmmakers to access HD and UHD content on Blu-ray discs and from online sources such as Netflix[.]

This cannot be the basis for granting an exemption to permit circumvention of AACS2 technology applied to Ultra HD content on Ultra HD Blu-ray discs. At most, this is a passing reference to “UHD content on Blu-ray discs” in a letter attached to comments that themselves do not discuss Ultra HD or 4K where the comments are in support of a modification to an existing exemption explicitly not covering Ultra HD Blu-ray where the modification sought is a change to the nature of the films that may make use of that existing exemption.

Although Netflix as an online source of content is not of direct concern to AACS LA, it is important to note that Morrisette’s claims (earlier in his letter) that Netflix requires “all original content programs to be produced in 4K” may be in error, thereby undermining the reference to UHD content “from online sources such as Netflix” in the portion quoted above. A review of Netflix’s website for its content partners is far more equivocal. In the FAQ, it provides:

Can I deliver 4K or UHD material?

Answer:

An emphatic "yes"!

We can accept 4K or UHD material today. We require that all 4K/UHD video assets are delivered as IMF compliant files. A full breakdown of our requirements can be found in our Technical Specification.

The one thing to keep in mind is that for us to accept receipt of 4K/UHD assets the content must have maintained a 4K/UHD resolution (or greater) from acquisition through post-production. We do not accept upscaled material.⁸

The referenced specifications provide the order of preference for five different video formats. Two are for standard definition, and none of them include Ultra HD.⁹

Morrisette's last discussion of 4K involves the distribution of the motion picture, *Arrival*, in the various formats: Ultra HD Blu-ray, Blu-ray and DVD. Morrisette shows that the Blu-ray format includes bonus footage ("extras") content that is not included in the DVD format – a proposition which at this point in the rulemaking is no longer disputed. AASC LA would point out though that the "extras" content is available in the non-Ultra HD version of the Blu-ray disc. Based on current knowledge, that is the case in all, or at least virtually all, cases – the Ultra HD Blu-ray disc either does not contain bonus features at all or contains only bonus features that are also contained in the (HD) Blu-ray disc. In any event, there is no evidence that circumvention of Ultra HD Blu-ray disc is required to obtain bonus footage.

⁸ FAQ, Partner Help Center, Netflix at <https://backlothelp.netflix.com/hc/en-us/articles/217044117-Can-I-deliver-4K-or-UHD-material->.

⁹ Netflix Licensed Content Delivery Specification and Operators Manual, Version 8.1 (Nov. 2017) at 12 (4 Primary Digital Assets 2K / HD / SD) available at <https://drive.google.com/file/d/0B9DJydDVOVKKLVdCdIF2cFVDVEE/view>. The preference is: 1.) High Definition or 2K – IMF Application Extended; 2.) High Definition – ProRes 422 HQ (iTunes package format (~220 Mbps)); 3. High Definition – MPEG-2 Transport Stream (80 Mbps); 4.) Standard Definition – ProRes 422 HQ (iTunes Package format (~50 Mbps));5. Standard Definition – MPEG-2 Transport Stream (50 Mbps).

B. Conclusion

In the last rulemaking, Joint Filmmakers, in clarifying that they were not seeking access to ultra high-definition content on UHD Blu-ray, stated that “[their] mission of 4K is to talk about the fact that HD in the contemporary system that we operate in is the standard.”¹⁰ As they did in the last proceeding, the Joint Filmmakers have discussed 4K in the context of their request for access to high definition content distributed on Blu-ray. This does not support an exemption that includes AACS2 and Ultra HD Blu-ray.

Nevertheless, if further submissions suggest that the prior filings were intended to request and support an exemption to circumvent AACS2 on UHD Blu-ray discs, then the Joint Filmmakers have not produced anything approaching an adequate case.

None of the other proponents have even mentioned Ultra HD content, let alone AACS2 and Ultra HD Blu-ray discs, in their submissions. No case can even be gleaned from their submissions to support a finding of a need for this very high-quality content for the purposes that have been discussed in their submissions. The Register, therefore, cannot recommend, and the Librarian cannot grant, an exemption covering AACS2 and Ultra HD Blu-ray.

DOCUMENTARY EVIDENCE

Commenters are encouraged to submit documentary evidence to support their arguments or illustrate pertinent points concerning the proposed exemption. Any such documentary evidence should be attached to this form and uploaded as one document through regulations.gov.

¹⁰ Hilkert, Tr. at 90:9-13 (May 20, 2015).