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UNITED STATES COPYRIGHT OFFICE



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

Please submit a separate comment for each proposed class.

NOTE: This form must be used in all three rounds of comments by all commenters not submitting short-form comments directly through regulations.gov, whether the commenter is supporting, opposing, or merely providing pertinent information about a proposed exemption.

When commenting on a proposed expansion to an existing exemption, you should focus your comments only on those issues relevant to the proposed expansion.

[] Check here if multimedia evidence is being provided in connection with this comment

Commenters can provide relevant multimedia evidence to support their arguments. Please note that such evidence must be separately submitted in conformity with the Office's instructions for submitting multimedia evidence, available on the Copyright Office website at <https://www.copyright.gov/1201/2018>.

ITEM A. COMMENTER INFORMATION

Commenters:

DVD Copy Control Association

The DVD Copy Control Association (“DVD CCA”), a not-for-profit corporation with its principal office in Morgan Hill, California, licenses the Content Scramble System (“CSS”) for use to protect against unauthorized access to or use of prerecorded video content contained on DVD discs. Its licensees include the owners of such content and the related authoring and disc replicating companies; producers of encryption engines, hardware and software decrypters; and manufacturers of DVD players and DVD-ROM drives

Advanced Access Content System Licensing Administrator

The Advanced Access Content System Licensing Administrator, LLC (“AACSLA”), is a cross-industry limited liability company with its principal offices in Beaverton, Oregon. The Founders of AACSLA are Warner Bros., Disney, Microsoft, Intel, Toshiba, Panasonic, Sony, and IBM. AACSLA licenses the Advanced Access Content System (“AACSLA”) technology that

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.

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. It has not. AACS2 serves only audiovisual content distributed on Ultra HD Blu-ray discs, which will not play on (HD) Blu-ray players.

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ITEM B. PROPOSED CLASS ADDRESSED

Proposed Class 10 – security research

ITEM C. OVERVIEW

The requested removal of at least two conditions that are contained in the existing (and to be renewed) security research exemption would upset the balance between the legitimate needs of security research professionals and the proprietors and users of CSS and AACS technologies. DVD CCA and AACS LA, accordingly, support retention of at least the conditions requiring that the security research be done “solely for the purpose of good faith research” and that “the information derived from the activity is used primarily to promote the security or safety of the class of devices or machines on which the computer program operates, or those who use such devices or machines, and is not used or maintained in a manner that facilitates copyright infringement.”

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

The TPMs of concern to DVD CCA and AACS LA are the Content Scramble System (“CSS”) used to protect copyright motion picture content on DVDs and the Advanced Access Content System (“AACS”) used to protect copyrighted motion picture content on Blu-ray Discs.

ITEM E. ASSERTED ADVERSE EFFECTS ON NONINFRINGING USES

The requested exemption would eliminate certain conditions placed on the current security research related exemption. While DVD CCA and AACS LA take no position with respect to, the security research issues associated with many of the products covered by the existing and proposed exemptions, the proposed exemption's inclusion of "consumer devices" necessarily means that devices enabling the use of CSS and AACS technologies are included within the requested exemption. Some of the conditions that are in the current (and renewed) exemption are not relevant to CSS and AACS and the products that enable those technologies. However, as a general matter, DVD CCA and AACS LA are concerned that the elimination of the conditions could lead to the security research exemption becoming a back door to creation of circumvention techniques and understanding not otherwise legitimately available with respect to CSS and AACS technologies.

Since only limited number of exemptions regarding CSS and AACS technologies exist (and assuming the new requests to circumvent CSS and AACS technologies are rejected), then CSS and AACS technologies will enjoy the protection of the statute with only minor and limited exemptions. However, that result could be seriously undermined by a broad-based, unconditioned security research exemption.

For purposes related to CSS and AACS technologies, the most significant conditions that should be retained are the requirements that (i) the circumvention activities be "solely for the purpose of good faith research" and (ii) "the information derived from the activity is used primarily to promote the security or safety of the class of devices or machines on which the computer program operates, or those who use such devices or machines, and is not used or maintained in a manner that facilitates copyright infringement." Without these conditions, the security research exemption could very well be used for the bad-faith purpose of advancing techniques to circumvent CSS and AACS technologies.

Although the researchers might not use the techniques to develop circumvention tools and products, the availability of their research could well provide substantial assistance to those actors, who would develop such tools and products. Since this proceeding is intended to balance the needs of those seeking an exemption with the benefits of a digital marketplace as Congress envisioned, the conditions noted above are essential to enabling those benefits to continue to exist for CSS and AACS. Accordingly, DVD CCA and AACS LA respectively request that the conditions remain and not be removed as requested.

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.