

*This is a Word document that allows users to type into the spaces below. The comment may be single-spaced, but should be in at least 12-point type. The italicized instructions on this template may be deleted.*

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 (“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”).

**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.

As ultra-high definition products are entering the marketplace, AACCS LA has developed a separate technology for the distribution of audiovisual content. This technology is identified as AACCS2 and not AACCS 2.0. This distinction in nomenclature is significant as the latter would suggest that it replaced AACCS distributed on Blu-ray. It has not. AACCS2 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 7 – Computer Programs: Repair

**ITEM C. OVERVIEW**

DVD CCA and AACCS LA are commenting to express concern that the formulation of the exemption and the rationale for the exemption should not inadvertently sweep in conduct that either is exempted under other categories or should not be (and may have been affirmatively not) exempted based on considerations unrelated to the concerns expressed by those requesting exemptions in this category. DVD CCA and AACCS LA also want to respond to arguments put forward in support of exemptions in this category that would appear to permit activities that are prohibited under the “anti-trafficking” provisions of the DMCA.

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

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

**ITEM E. ASSERTED ADVERSE EFFECTS ON NONINFRINGING USES**

## I. Exemption of Uses vs. Trafficking

Most proponents of exemptions in this category base their arguments around the use of technological protection measures (“TPMs”) associated with products that do not themselves protect copyrighted content from infringing or other unauthorized uses. Rather, the issue for most of the proponents is that TPMs are used to block access to elements of products that are integral to repairing those products but where the products themselves perform functions unrelated to copyrighted content. DVD CCA and AACS LA have no comment on the merits of the requests insofar as they relate to these types of situations, except to the extent that one or more of the requests asks that the Librarian authorize the distribution of circumvention tools or the promotion of circumvention services, activities that are prohibited by the anti-trafficking provisions of the DMCA and that are not proper subjects for exemptions pursuant to this proceeding.

DVD CCA and AACS LA recognize that some proponents have crafted a distinction between trafficking activities and the mere use of a tool that may circumvent a TPM, especially where the circumvention is undertaken as noted above – not to gain access to copyrighted content protected by the TPM but to enable repair a product whose function is unrelated to the protection of copyrighted content. *See* Auto Care Association comments at 4; Consumer Technology Association comments at 4-6. Further, DVD CCA and AACS LA agree that the language of the exemption can be reasonably applied to an expert repair person where that person is the “user” of a tool for the exempted purpose. CTA comments at 4.<sup>1</sup> DVD CCA and AACS LA agree that such a careful analysis has merit and that, using that analysis, the Librarian may authorize a user to use a tool for circumvention purposes where the term “user” may be understood to include an expert repair person acting in relation to this exemption.

However, other proponents have characterized their requests in ways that seem to DVD CCA and AACS LA not to be as careful about the line between exempted uses and users and the anti-trafficking provisions. For example, the language proposed by the farm groups proposes to exempt very broadly “one rendering expert assistance toward maintaining or improving its use” and seems to step over the line toward trafficking. American Farm Bureau Federation/National Corn Growers/National Farmers Union comments at 6. While DVD CCA and AACS LA understand that the proposed exemption is specific to farm equipment, not involving DVD and Blu-ray products, this language in the farm equipment context needs to be consistent with an approach that might someday be proposed for DVD and Blu-ray products. DVD CCA and AACS LA understand that the requesting parties did not intend their requests and explanations to cross over this line, and DVD CCA and AACS LA believe that their requests can be formulated in terms of authorizing the use of tools that may circumvent by users who may include expert repair personnel, as discussed above, but not authorize activities that are prohibited under the anti-trafficking provisions of the DMCA.

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<sup>1</sup> DVD CCA and AACS LA do, however, disagree with CTA that legislative history of the Unlocking Act has any relevance to this proceeding or to the analysis of the anti-trafficking provisions of the DMCA other than in the specific contexts addressed by the Unlocking Act.

## **II. Exemption to Permit Repair Must Be Limited to Returning the Product to its Original State, Not to Facilitate Unauthorized Functions**

DVD CCA and AACS LA do not have an objection to requests to authorize circumvention of TPMs for the purpose of repairing devices to restore the original and intended functions of those devices.

Some requestors, however, have included in their comments examples of circumvention under the guise of “repair” in order to enable functions that were not part of the original or intended functions of the device. Specifically, EFF has used as an example to be enabled under the requested exemption the installation and use of a Linux operating system in place of the operating system that was supplied with the original product. EFF Comments at 6. Since this capability was not part of the original product and potentially would enable a consumer to use the product to enable copying and redistributing copyrighted material protected by the TPM, DVD CCA and AACS LA oppose a formulation of an exemption in this category that could be read to authorize this particular example (or others that would have the same effect).

More broadly, EFF has characterized the exemption here as “tinkering” rather than “repairing.” Again, DVD CCA and AACS LA express no opinion with respect to exemptions that authorize repairing a product to restore its original function of a product or to enable a product to perform those original functions in a manner that does not threaten infringement of copyrights or unauthorized uses of copyrighted content, that would have otherwise been protected by the circumvented TPM. However, DVD CCA and AACS LA object to any exemption that, in the name of “repair,” enables circumvention of CSS or AACS in order to enable a DVD Player or Blu-ray Player to allow a consumer to obtain an unencrypted copy of the content that was protected by CSS or AACS on a DVD or Blu-ray Disc, respectively.

### **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](http://regulations.gov).*