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UNITED STATES COPYRIGHT OFFICE



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

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

### 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 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, AACSLA has developed a separate technology for the distribution of audiovisual content. This technology is identified as AACSLA2 and not AACSLA 2.0. This distinction in nomenclature is significant as the latter would suggest that it replaced AACSLA distributed on Blu-ray. It has not. AACSLA2 serves only audiovisual content distributed on Ultra HD Blu-ray discs, which will not play on (HD) Blu-ray players.

**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.

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**ITEM B. PROPOSED CLASS ADDRESSED**

Proposed Class 9 - Preservation

**ITEM C. OVERVIEW**

The request is to authorize circumvention of various TPMs in order to preserve the underlying technologies and the content that is contained in those technologies. The basic argument is that many technologies have become outmoded or superseded and that there is an urgent need to be able to access the underlying technologies and content dependent on those technologies in order to ensure their preservation. DVD CCA and AACS LA do not dispute the basic proposition, as it applies to technologies that are, in fact, outmoded or superseded. Neither of those terms applies to CSS, DVD format, AACS or Blu-ray format, and DVD CCA and AACS LA ask that any exemption granted in response to this request not include CSS and AACS technologies.

**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 allow circumvention of any TPM by the listed institutions for the purpose of preserving both computer programs and computer-program dependent materials. Computer programs are described to include a number of programs or applications, including “media players.” Software Preservation Network and Library Copyright Alliance (“SPN/LCA”) Comment at 4. The meaning of “computer-program dependent materials” are less clear to DVD CCA and AACS LA. In the initial description, the requesters suggest that it means “formats” (like Adobe Acrobat) but later in their submission, it seems clear that “digital materials” include the actual content that is contained in particular formats.<sup>1</sup> The request also states that the intention is to make the preserved works available for use on “contemporary hardware machines.” SPN/LCA Comment at 11.

This request apparently would cover the computer-based applications that playback content protected by CSS or AACS technologies from the DVDs and Blu-ray Discs on which such content is stored, the software that is, or is part of, the CSS or AACS playback system built into set-top type DVD Players and Blu-ray Disc Players, and the motion picture content contained on DVDs and Blu-ray Discs that is “dependent” on those playback programs. The material submitted in support of this exemption, however, do not mention CSS, DVD, AACS, or Blu-ray Discs. The arguments and factual information contained in the submission address technologies that have been abandoned or superseded. Neither, of course, applies to CSS, DVD, AACS or Blu-ray technologies.

Although CSS and DVD technologies are now over 20 years old, sales of both new content recorded onto DVD using CSS protection and new products capable of playing back those DVDs remain strong. DVD CCA continues as a strong, viable licensing entity and expects to be in existence for at least another decade, supporting a continued marketplace for both new DVDs and DVD playback products. The reasons stated in the supporting submission simply do not apply to CSS and DVD technologies and will not apply during the three-year period covered by exemptions granted in this proceeding.

The original format for high definition Blu-ray Discs and the AACS technology used to provide protection for such content is now over a decade old, but Blu-ray remains a vibrant format for both content delivery and playback products. And the most recent format, Ultra HD Blu-ray and the associated AACS2 technology to protect the content on Ultra HD Blu-ray Discs are just over two years old at this point. AACS LA, as the licensing body for both of these technologies, remains an active organization with no reason to believe that it will cease to exist in any foreseeable future.

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<sup>1</sup> See, e.g., “This software-dependent material could include an artist’s born-digital works or an architectural firm’s first-draft designs, or more traditional written documents like a novel’s first draft.” SPN/LCA Comment at 7.

In short, the requesting parties have not made any case at all to support circumvention of CSS or AACS technologies. There is no reason to believe that either of these technologies will be obsolete in the next few years. And the scope of the requested exemption, permitting off-site access to content (presumably in unencrypted, in the clear form) after it has been captured as a result of the exempted circumvention, would have serious negative effects on the market for CSS- and AACS- protected content, as well as the market for CSS and AACS technologies. Accordingly, DVD CCA and AACS LA respectfully request that any exemption granted in response to this request specifically exclude CSS and AACS from the TPMs for which circumvention may be authorized.

#### **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.*