

UNITED STATES COPYRIGHT OFFICE



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

REPLY COMMENT – MARCH 14, 2018

ITEM A. COMMENTER INFORMATION

American Farm Bureau Federation, Mary Pat Weyback
Deputy General Counsel
600 Maryland Ave SW Suite 1000W
Washington DC 20024
(202) 406-3619
marypatw@afb.org.

National Corn Growers Association, Jon Doggett
Vice President of Public Policy
20 F Street NW, Suite 600
Washington, DC 20001
(202) 628-7001
doggett@ncga.com

National Farmers Union, Rob Larew
Senior Vice President of Public Policy and Communications
20 F Street NW, Suite 300
Washington, DC 20001
(202) 554-1600
rlarew@nfudc.org

Of counsel:

USC Intellectual Property & Technology Law Clinic, Valerie Barreiro
Clinical Associate Professor of Law & Director, Intellectual Property & Technology Law Clinic
With assistance from law students Corinne Fierro, Kate Hahm and Jake Myung
University of Southern California, Gould School of Law
(213) 740-7613
ipt@law.usc.edu

Robert S. Schwartz, Constantine Cannon LLP
1001 Pennsylvania Avenue, N.W. 1300N
Washington, D.C. 20004
(202) 204-3508
rschwartz@constantinecannon.com

ITEM B. PROPOSED CLASS ADDRESSED

Proposed Class 7: Computer Programs – Repair

ITEM C. REPLY COMMENT

The American Farm Bureau Federation, National Corn Growers Association, and National Farmers Union (“Farmers”) file this Reply Comment to note the following with respect to the completed Opposition round:

- **No Opposition** was filed to challenge or refute the six Declarations of farmers and experts that set forth in detail:
 - Embedded software, protected by anticircumvention measures, makes it increasingly impossible for farmers to maintain or repair their equipment without assistance being provided to them, as software “users,” by independent experts.
 - Without an exemption specifically for farm equipment enabling such assistance, farmers’ very livelihood is threatened due to short growing seasons and distance and time delays involved in getting help from authorized dealers.
- **No Opposition** was filed asserting that there would be damage to any intellectual property right or owner, or to the marketplace in any respect, in the event it is necessary for an independent expert to provide such assistance through the use of a software tool that defeats an anticircumvention measure.

The *only* mention of Farmers’ petition or Farmers’ Long Comment came in the course of the Opposition of DVD Copy Control Association and Advanced Access Content System Licensing Administrator (“DVD CCA / AACS”). These comments, while expressing a broader “trafficking” concern, *endorsed* an exemption for *expert assistance to users of farm equipment*:

“DVD CCA and AACS LA believe that [Farmers’] 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.”

Farmers appreciate the care taken by DVD CCA and AACS LA in stating both this endorsement and their concern. Farmers believe that the view DVD CCA and AACS LA express is consistent with Farmers’ view that the *use* of a circumvention tool, no matter how obtained, is not “trafficking.” In any event, Farmers trust that the Register in its Recommendation to the Librarian will propose to the Congress any relief it concludes that it cannot grant in an exemption.