

Section 1201 Hearing Agenda

Hearing Locations	Date/Time	Transcripts
Washington, D.C. James Madison Memorial Building Library of Congress Room LM-408	Friday May 11, 2012	(No Transcript)
Los Angeles, California UCLA Law School 405 Hilgard Avenue, Los Angeles, CA	Thursday May 17 2012	Hearing Transcript
Washington, D.C. James Madison Memorial Building Library of Congress Room LM-408	Thursday May 31, 2012 Monday June 4, 2012	Hearing Transcript Hearing Transcript
Washington, D.C. Thomas Jefferson Building Library of Congress Whittall Pavilion Ground Floor	Tuesday June 5, 2012	Hearing Transcript

Washington, DC Tech Hearing

IMPORTANT INFORMATION:

***All powerpoints that will be used at each of the hearings, including the May 11th hearing, should be submitted to the Copyright Office as soon as possible.**

*** The Copyright Office will provide monitors, screens, and wireless Internet access. All other equipment must be provided by the participants.**

*** Participants should be available to set up and test equipment on Thursday May 10, 2012 between the hours of 1:00 P.M. and 5:00 P.M.**

*** A sign language specialist will be present on May 11, 2012.**

*** The May 11th technology demonstrations will NOT be streamed live over the Internet, but it will be recorded.**

Friday, May 11, 2012

10:00 A.M.

Demonstrations in relation to the following proposed Classes:

3. Computer programs that enable lawfully acquired video game consoles to execute lawfully acquired software applications, where circumvention is undertaken for the purpose of enabling interoperability of such applications with computer programs on the gaming console.
4. Computer programs that enable the installation and execution of lawfully obtained software on a personal computing device, where circumvention is performed by or at the request of the device's owner.
5. Computer programs that enable wireless telephone handsets ("smartphones") and tablets to execute lawfully obtained software applications, where circumvention is undertaken for the purpose of enabling interoperability of such applications with computer programs on the handset or tablet.

Panelists:

Dan Auerbach, Staff Technologist, Electronic Frontier Foundation. Proponent for proposed Classes 3 and 5.

Brad Lassey, Engineer, Mozilla Corporation. In support of proposed Classes 4 and 5. **Jishnu Menon**, Data and Product Counsel, Mozilla, sitting in support.

Jay Sulzberger & Brett Wynkoop, New Yorkers for Fair Use. In support of proposed Class 4.

11:30 A.M. LUNCH BREAK

1:00 P.M.

Demonstrations in relation to the following proposed Classes:

- 7A. Motion pictures on DVDs that are lawfully made and acquired and that are protected by the Content Scrambling System when circumvention is accomplished solely in order to accomplish the incorporation of short portions of motion pictures into new works for the purpose of criticism or comment, and where the person engaging in circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of the use in the following instances: (i) Educational uses by college and university professors and by college and university film and media studies students; (ii) Documentary filmmaking; (iii) Noncommercial videos.

7B. Audiovisual works on DVDs that are lawfully made and acquired and that are protected by the Content Scrambling System, where circumvention is undertaken for the purpose of extracting clips for inclusion in primarily noncommercial videos that do not infringe copyright, and the person engaging in the circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of the use.

7C. Audiovisual works that are lawfully made and acquired via online distribution services, where circumvention is undertaken for the purpose of extracting clips for inclusion in primarily noncommercial videos that do not infringe copyright, and the person engaging in the circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of the use, and the works in question are not readily available on DVD.

7D. Motion pictures that are lawfully made and acquired from DVDs protected by the Content Scrambling System and Blu-Ray discs protected by Advanced Access Content System, or, if the motion picture is not reasonably available on DVD or Blu-Ray or not reasonably available in sufficient audiovisual quality on DVD or Blu-Ray, then from digitally transmitted video protected by an authentication protocol or by encryption, when circumvention is accomplished solely in order to incorporate short portions of motion pictures into new works for the purpose of fair use, and when the person engaging in circumvention reasonably believes that circumvention is necessary to obtain the motion picture in the following instances: (1) documentary filmmaking; OR (2) fictional filmmaking.

7E. Motion pictures that are lawfully made and acquired from DVDs protected by the Content Scrambling System or, if the motion picture is not reasonably available on or not reasonably available in sufficient audiovisual quality on DVD, then from digitally transmitted video protected by an authentication protocol or by encryption, when circumvention is accomplished solely in order to incorporate short portions of motion pictures into new works for the purpose of fair use, and when the person engaging in circumvention reasonably believes that circumvention is necessary to obtain the motion picture for multimedia e-book authorship.

7F. Motion pictures on DVDs that are lawfully made and acquired and that are protected by the Content Scrambling System when circumvention is accomplished solely in order to accomplish the incorporation of short portions of motion pictures into new works for the purpose of criticism or comment, and where the person engaging in circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of educational uses by college and university professors and by college and university film and media studies students.

7G. Audiovisual works (optical discs, streaming media, and downloads) that are lawfully made and acquired when circumvention is accomplished by college and university students or faculty

(including teaching and research assistants) solely in order to incorporate short portions of video into new works for the purpose of criticism or comment.

8. Lawfully accessed audiovisual works used for educational purposes by kindergarten through twelfth grade educators.

10A. Motion pictures on lawfully made and lawfully acquired DVDs that are protected by the Content Scrambling System when circumvention is accomplished solely in order to accomplish the noncommercial space shifting of the contained motion picture.

10B. Legally acquired digital media (motion pictures, sound recordings, and e-books) for personal use and for the purposes of making back-up copies, format shifting, access, and transfer.

Panelists:

Jim Morrisette, Technical Director, Kartemquin Educational Films. Proponent for proposed Class 7 D. Jack Lerner, Clinical Associate Professor, USC Gould School of Law—Director of USC Intellectual Property and Technology Law Clinic and Brendan Charney, Clinical Intern, USC Intellectual Property and Technology Law Clinic, sitting in support.

Mitch Singer, Chief Digital Strategy Officer, Sony Pictures Entertainment, on behalf of Joint Creators and Copyright Owners, accompanied by counsel, Steve Metalitz. Opponent of proposed Classes 7, 8, and 10.

Donald Leake Jr., Program Director, Copy Protection Business Development, IBM Research Division. In support of opponent AACSLA with regard to proposed Classes 7G; 8; and 10B.

David Taylor, Counsel, DVD CCA and AACSLA with Tim Short, Teacher, for certain demonstrations. Opponent of proposed Classes 7 D, E, and G; 8; and 10 A & B.

Los Angeles, California

*** Each witness will be given 10 minutes to present testimony. Witnesses opposing more than one class in a single panel may, at the Office's discretion, be given additional time to present. testimony ***

Thursday, May 17, 2012

Hearing Transcript

9:00 A.M.

Proposed Class to be discussed:

3. Computer programs that enable lawfully acquired video game consoles to execute lawfully acquired software applications, where circumvention is undertaken for the purpose of enabling interoperability of such applications with computer programs on the gaming console.

Marcia Hoffman, Senior Staff Attorney, Electronic Frontier Foundation. Proponent for proposed Class 3.

Christian Genetski, Senior Vice President and General Counsel, Entertainment Software Association. Opponent of proposed Class 3.

Steve Metalitz, Partner, MSK, representing Joint Creators and Copyright Owners. Opponent of proposed Class 3.

10:30 A.M.

Proposed Class to be discussed:

5. Computer programs that enable wireless telephone handsets ("smartphones") and tablets to execute lawfully obtained software applications, where circumvention is undertaken for the purpose of enabling interoperability of such applications with computer programs on the handset or tablet.

Panelists:

Marcia Hoffman, Senior Staff Attorney, Electronic Frontier Foundation. Proponent for proposed Class 5.

Art Neill, Executive Director, New Media Rights. In support of proposed Class 5.

Steve Metalitz, Partner, MSK, representing Joint Creators and Copyright Owners. Opponent of proposed Class 5.

12:00 P.M. LUNCH

1:30 P.M.

Proposed Classes to be discussed:

7A. Motion pictures on DVDs that are lawfully made and acquired and that are protected by the Content Scrambling System when circumvention is accomplished solely in order to accomplish the incorporation of short portions of motion pictures into new works for the purpose of criticism or comment, and where the person engaging in circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of the use in the following instances: (i) Educational uses by college and university professors and by college and university film and media studies students; (ii) Documentary filmmaking; (iii) Noncommercial videos.

7B. Audiovisual works on DVDs that are lawfully made and acquired and that are protected by the Content Scrambling System, where circumvention is undertaken for the purpose of extracting clips for inclusion in primarily noncommercial videos that do not infringe copyright, and the person engaging in the circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of the use.

7C. Audiovisual works that are lawfully made and acquired via online distribution services, where circumvention is undertaken for the purpose of extracting clips for inclusion in primarily noncommercial videos that do not infringe copyright, and the person engaging in the circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of the use, and the works in question are not readily available on DVD.

7D. Motion pictures that are lawfully made and acquired from DVDs protected by the Content Scrambling System and Blu-Ray discs protected by Advanced Access Content System, or, if the motion picture is not reasonably available on DVD or Blu-Ray or not reasonably available in sufficient audiovisual quality on DVD or Blu-Ray, then from digitally transmitted video protected by an authentication protocol or by encryption, when circumvention is accomplished solely in order to incorporate short portions of motion pictures into new works for the purpose of fair use, and when the person engaging in circumvention reasonably believes that circumvention is necessary to obtain the motion picture in the following instances: (1) documentary filmmaking; OR (2) fictional filmmaking.

7E. Motion pictures that are lawfully made and acquired from DVDs protected by the Content Scrambling System or, if the motion picture is not reasonably available on or not reasonably available in sufficient audiovisual quality on DVD, then from digitally transmitted video protected by an authentication protocol or by encryption, when circumvention is accomplished solely in order to incorporate short portions of motion pictures into new works for the purpose of fair use, and when the person engaging in circumvention reasonably believes that circumvention is necessary to obtain the motion picture for multimedia e-book authorship.

7F. Motion pictures on DVDs that are lawfully made and acquired and that are protected by the Content Scrambling System when circumvention is accomplished solely in order to accomplish

the incorporation of short portions of motion pictures into new works for the purpose of criticism or comment, and where the person engaging in circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of educational uses by college and university professors and by college and university film and media studies students.

7G. Audiovisual works (optical discs, streaming media, and downloads) that are lawfully made and acquired when circumvention is accomplished by college and university students or faculty (including teaching and research assistants) solely in order to incorporate short portions of video into new works for the purpose of criticism or comment.

10A. Motion pictures on lawfully made and lawfully acquired DVDs that are protected by the Content Scrambling System when circumvention is accomplished solely in order to accomplish the noncommercial space shifting of the contained motion picture.

10B. Legally acquired digital media (motion pictures, sound recordings, and e-books) for personal use and for the purposes of making back-up copies, format shifting, access, and transfer.

Panelists:

Corynne McSherry, Intellectual Property Director, Electronic Frontier Foundation. Proponent of proposed Classes 7B & C.

Art Neill, Executive Director, New Media Rights. In support of proposed Classes 7B & C.

Jonathan McIntosh, Remix video artist. In support of proposed Classes 7B & D.

Laurence Thrush, Film Director. Proponent of proposed Class 7D. Jack Lerner, Clinical Associate Professor, USC Gould School of Law—Director of USC Intellectual Property and Technology Law Clinic, **Brendan Charney**, Clinical Intern, USC Intellectual Property and Technology Law Clinic, and **Alex Cohen**, Clinical Intern, USC Intellectual Property and Technology Law Clinic, sitting in support.

Michael C. Donaldson, General Counsel, Film Independent. In support of proposed Classes 7 D & E.

Clarissa Weirick, Executive Vice President and General Counsel, Warner Bros. Home Entertainment Inc. Opponent of Classes 7 and 10.

Simon Swart, Executive Vice President and General Manager, Twentieth Century Fox Home Entertainment. Opponent of Classes 7 and 10.

Steve Metalitz, Partner, MSK, representing Joint Creators and Copyright Owners. Opponent of Classes 7 and 10.

Washington, DC

*** Each witness will be given 10 minutes to present testimony. Witnesses opposing more than one class in a single panel may, at the Office's discretion, be given additional time to present testimony ***

Thursday May 31, 2012

Hearing Transcript

9:00 A.M.

Proposed Classes to be discussed:

6A. Computer programs, in the form of firmware or software, including data used by those programs, that enable mobile devices to connect to a wireless communications network, when circumvention is initiated by the owner of the device to remove a restriction that limits the device's operability to a limited number of networks, or circumvention is initiated to connect to a wireless communications network.

6B. Computer programs, in the form of firmware or software, including data used by those programs, that enable wireless devices to connect to a wireless communications network, when circumvention is initiated by the owner of the copy of the computer program principally in order to connect to a wireless communications network and access to such communications network is authorized by the operator of such communications network.

6C. Computer programs, in the form of firmware or software, including data used by those programs, that enable wireless devices to connect to a wireless communications network, when circumvention is initiated by the owner of the copy of the computer program solely in order to connect to a wireless communications network and access to such communications network is authorized by the operator of such communications network.

Panelists:

Laura Moy, Staff Attorney, Institute for Public Representation. Proponent of proposed Class 6A.

Parul Desai, Communications Policy Counsel, Consumers Union. Proponent of proposed Class 6A.

Steven Berry, President & CEO, RCA—The Competitive Carriers Association. Proponent of proposed Class 6C.

Bruce Joseph, Partner, Wiley Rein, Counsel for CTIA—The Wireless Association. Opponent of proposed Classes 6A-C.

Followed by:

Proposed Class to be discussed:

1. Literary works in the public domain that are made available in digital copies.

Monday June 4, 2012

Hearing Transcript

9:00 A.M.

Proposed Classes to be discussed:

7F. Motion pictures on DVDs that are lawfully made and acquired and that are protected by the Content Scrambling System when circumvention is accomplished solely in order to accomplish the incorporation of short portions of motion pictures into new works for the purpose of criticism or comment, and where the person engaging in circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of educational uses by college and university professors and by college and university film and media studies students.

7G. Audiovisual works (optical discs, streaming media, and downloads) that are lawfully made and acquired when circumvention is accomplished by college and university students or faculty (including teaching and research assistants) solely in order to incorporate short portions of video into new works for the purpose of criticism or comment.

8. Lawfully accessed audiovisual works used for educational purposes by kindergarten through twelfth grade educators.

Panelists:

Jonathan Band, Counsel to the Library Copyright Alliance. Proponent of proposed Class 7F.

Peter Decherney, Associate Professor of Cinema Studies, University of Pennsylvania. Proponent for proposed Class 7G.

Martine Rife, Professor of English, Lansing Community College. In support of proposed Classes 7B, C, and G.

Renee Hobbs, Professor and Founding Director of the Harrington School of Communication and Media, University of Rhode Island. Proponent for proposed Class 8.

Spiro Bolos, Faculty, Media Education Lab, Temple University. In support of proposed Class 8.

Dean Marks, on behalf of AACLS LA. Opponent of proposed Classes 7D, E, G and 8.

Bruce Turnbull, Counsel, DVD CCA. Opponent of proposed Classes 7A-G and 8.

Steve Metalitz and Matt Williams, MSK, representing Joint Creators and Copyright Owners. Opponent of Classes 7A-G and 8.

12:00 P.M. LUNCH

1:00 P.M.

Proposed Classes to be discussed:

7D. Motion pictures that are lawfully made and acquired from DVDs protected by the Content Scrambling System and Blu-Ray discs protected by Advanced Access Content System, or, if the motion picture is not reasonably available on DVD or Blu-Ray or not reasonably available in sufficient audiovisual quality on DVD or Blu-Ray, then from digitally transmitted video protected by an authentication protocol or by encryption, when circumvention is accomplished solely in order to incorporate short portions of motion pictures into new works for the purpose of fair use, and when the person engaging in circumvention reasonably believes that circumvention is necessary to obtain the motion picture in the following instances: (1) documentary filmmaking; OR (2) fictional filmmaking.

7E. Motion pictures that are lawfully made and acquired from DVDs protected by the Content Scrambling System or, if the motion picture is not reasonably available on or not reasonably available in sufficient audiovisual quality on DVD, then from digitally transmitted video protected by an authentication protocol or by encryption, when circumvention is accomplished solely in order to incorporate short portions of motion pictures into new works for the purpose of fair use, and when the person engaging in circumvention reasonably believes that circumvention is necessary to obtain the motion picture for multimedia e-book authorship.

Panelists:

Jim Morrisette, Technical Director, Kartemquin Educational Films. Proponent for proposed Class 7 D. **Michael C. Donaldson**, General Counsel, Film Independent, **Jack Lerner**, Clinical Associate Professor, USC Gould School of Law—Director of USC Intellectual Property and Technology Law Clinic, **Brendan Charney**, Clinical Intern, USC Intellectual Property and Technology Law Clinic, and **Alex Cohen**, Clinical Intern, USC Intellectual Property and Technology Law Clinic, sitting in support.

Gordon Quinn, Artistic Director, Kartemquin Educational Films. In support of proposed Class 7D.

Gene Rosow, Documentary filmmaker and scholar. In support of proposed Class 7E.

Bobette Buster, Film Professor, screenwriter, and producer. In support of proposed Class 7E.

Peter Brantley, Director, Bookserver Project-Internet Archive. In support of proposed Class 7E.

Dean Marks, on behalf of AACLS LA. Opponent of proposed Classes 7D, E, G and 8.

Bruce Turnbull, Counsel for DVD CCA. Opponent of proposed Classes 7A-G and 8.

Steve Metalitz and Matt Williams, MSK, representing Joint Creators and Copyright Owners. Opponent of Classes 7A-G and 8.

3:15 P.M. BREAK

3:30 P.M.

Proposed Classes to be discussed:

7B. Audiovisual works on DVDs that are lawfully made and acquired and that are protected by the Content Scrambling System, where circumvention is undertaken for the purpose of extracting clips for inclusion in primarily noncommercial videos that do not infringe copyright, and the person engaging in the circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of the use.

7C. Audiovisual works that are lawfully made and acquired via online distribution services, where circumvention is undertaken for the purpose of extracting clips for inclusion in primarily noncommercial videos that do not infringe copyright, and the person engaging in the circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of the use, and the works in question are not readily available on DVD.

Panelists:

Corynne McSherry, Intellectual Property Director, Electronic Frontier Foundation. Proponent for proposed Classes 7B and C.

Rebecca Tushnet, Professor, Georgetown University Law Center. Proponent for proposed Classes 7B and C.

Francesca Coppa, Associate Professor of English and Film Studies, Muhlenberg College. In support of proposed Classes 7B and C.

Tisha Turk, Associate Professor of English, University of Minnesota-Morris. In support of proposed Classes 7B and C.

Martine Rife, Professor of English, Lansing Community College. In support of proposed Classes 7B, C, and G.

Bruce Turnbull, Counsel for DVD CCA. Opponent of proposed Classes 7A-G and 8.

Steve Metalitz and Matt Williams, Partner-MSK, representing Joint Creators and Copyright Owners. Opponent of Classes 7A-G and 8.

Tuesday June 5, 2012

Hearing Transcript

*** Sign language interpreter will be available ***

9:00 A.M.

Proposed Class to be discussed:

2. Literary works, distributed electronically, that: (1) contain digital rights management and/or other access controls which either prevent the enabling of the book's read-aloud functionality or which interfere with screen readers or other applications or assistive technologies that render the text in specialized formats; and (2) are legally obtained by blind or other persons with print disabilities (as such persons are defined in section 121 of Title 17, United States Code), or are legally obtained by authorized entities (as defined in such section) distributing such work exclusively to such persons.

Panelists:

Mark Richert, Director, Public Policy, American Foundation for the Blind. Proponent of proposed Class 2.

Melanie Brunson, Executive Director, American Council of the Blind. Proponent of proposed Class 2.

10:15 A.M. BREAK

10:30 A.M.

Proposed Classes to be discussed:

9A. Motion pictures and other audiovisual works delivered via Internet protocol (IP) protected by technological measures that control access to such works when circumvention is accomplished to facilitate the creation, improvement, or rendering of visual representations or descriptions of audible portions of such works for the purpose of improving the ability of individuals who may lawfully access such works to perceive such works.

9B. Motion pictures and other audiovisual works delivered via Internet protocol (IP) protected by technological measures that control access to such works when circumvention is accomplished to facilitate the creation, improvement, or rendering of audible representations or descriptions of visual portions of such works for the purpose of improving the ability of individuals who may lawfully access such works to perceive such works.

9C. Motion pictures and other audiovisual works on fixed disc-based media protected by technological measures that control access to such works when circumvention is accomplished to facilitate the creation, improvement, or rendering of visual representations or descriptions of audible portions of such works for the purpose of improving the ability of individuals who may lawfully access such works to perceive such works.

9D. Motion pictures and other audiovisual works on fixed disc-based media protected by technological measures that control access to such works when circumvention is accomplished to facilitate the creation, improvement, or rendering of audible representations or descriptions of visual portions of such works for the purpose of improving the ability of individuals who may lawfully access such works to perceive such works.

Panelists:

Blake Reid, Staff Attorney, Institute for Public Representation. Proponent of proposed Classes 9A-D.

Dr. Christian Vogler, Ph.D, Associate Professor and Director, Technology Access Program, Gallaudet University. Proponent of proposed Classes 9A-D.

Andrew Phillips, Policy Counsel, National Association of the Deaf. Proponent of proposed Classes 9A-D.

Mark Richert, Director, Public Policy, American Foundation for the Blind. In support of proposed Classes 9A-D.

Dean Marks, on behalf of AACCS LA. Opponent of proposed Classes 9C and D.

Steve Metalitz, Partner-MSK, representing Joint Creators and Copyright Owners. Opponent of Classes 9A-D.

Linda Kinney, Senior Vice President and Associate General Counsel, MPAA. Opponent of Classes 9A-D.

12:30 P.M. LUNCH

1:30 P.M.

Proposed Classes to be discussed:

4. Computer programs that enable the installation and execution of lawfully obtained software on a personal computing device, where circumvention is performed by or at the request of the device's owner.

5. Computer programs that enable wireless telephone handsets ("smartphones") and tablets to execute lawfully obtained software applications, where circumvention is undertaken for the purpose of enabling interoperability of such applications with computer programs on the handset or tablet.

Panelists:

Aaron Williamson, Counsel, Software Freedom Law Center. Proponent of proposed Class 4.

Jay Sulzberger & Brett Wynkoop, New Yorkers for Fair Use. In support of proposed Class 4.

Marcia Hoffman, Senior Staff Attorney, Electronic Frontier Foundation. Proponent of proposed Class 5.

Steve Metalitz, MSK, representing Joint Creators and Copyright Owners. Opponent of proposed Class 4.

Jesse Feder, Director of International Trade and Intellectual Property, Business Software Alliance. Opponent of proposed Classes 4 and 5.

3:30 BREAK

3:45

Proposed Classes to be discussed:

10A. Motion pictures on lawfully made and lawfully acquired DVDs that are protected by the Content Scrambling System when circumvention is accomplished solely in order to accomplish the noncommercial space shifting of the contained motion picture.

10B. Legally acquired digital media (motion pictures, sound recordings, and e-books) for personal use and for the purposes of making back-up copies, format shifting, access, and transfer.

Panelists:

Michael Weinberg, Staff Attorney, Public Knowledge. Proponent for proposed Class 10.

Bruce Turnbull, Counsel, DVD CCA. Opponent of proposed Classes 10 A and B.

Dean Marks, On behalf of AACCS LA. Opponent of proposed Class 10B.

Steve Metalitz and Matt Williams, MSK, representing Joint Creators and Copyright Owners. Opponent of Classes 10A and B.