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June 8, 2006

BY E:MAIL

David O. Carson, Esq.
General Counsel
United States Copyright Office
101 Independence Avenue, SE
Washington, DC 20559-6000

Re: Docket RM 2005-11

Dear Mr. Carson:

On behalf of our client, the DVD Copy Control Association, Inc. ("DVD CCA"), this letter responds to your letter of May 18, 2006. Please note that Ms. Sandra Benedetto of the Pioneer Electronics Corporation appeared at the April 3 hearing as part of the presentation of the DVD CCA and, hence, will not be responding separately. Your letter requested that DVD CCA provide its views on a possible formulation of an exemption to permit circumvention of "access controls on DVDs solely for the purpose of copying short film clips from motion pictures for purposes of classroom display."

DVD CCA opposes any exemption from the circumvention prohibitions of the Digital Millennium Copyright Act for the purposes described in the submissions, including in the reformulated proposal contained in your letter. We believe that our previous comments (in both the prehearing reply comments and the statements at the hearing) are applicable to the reformulated possible exemption and direct your attention to those comments as well as the points made below in this letter.

The principal reason for our opposition is that there has been no showing that such an exemption is needed in order to allow non-infringing uses of the type described. Indeed, in the prehearing reply comments and at the hearing, several alternatives were described and demonstrated to show that such uses are enabled through methods that do not require circumvention of the access controls applied to certain DVDs.

DVD CCA's earlier comments and presentation at the hearing showed that there are products in the market today that permit electronic marking of content on DVDs to permit the playing of short film clips without any need to circumvent the Content Scramble System's access controls. The Pioneer player demonstrated by Ms. Benedetto is easy to use, allows advance preparation by the person wanting to display the clips, and moves quickly and easily from clip to clip on a single disc. The fact that playback of clips from more than one disc requires insertion of each disc at the time when playback is desired is a minor, even trivial, inconvenience for the user. Such inconvenience should not be the basis for permitting an exemption from this very important circumvention prohibition of the DMCA.

Further, other means of obtaining clips were demonstrated by others at the hearing, and we understand these means will be the subject of further comment in response to your letter. With multiple means of attaining the playback of short film clips without resorting to circumvention, there is no basis for granting a request to be exempt from circumvention in order to permit playback of such film clips.

The second reason why DVD CCA opposes the exemption as formulated in your letter is that the statute does not permit the granting of exemptions based on a defined use of the work or on a defined class of users. Rather, the statute provides for exemption of a "class of works" where there is a showing that a technological protection measure is causing users to be adversely affected in their non-infringing uses of "that particular class of works." [section 1201(a)(1)(B)]. In the previous proceedings under that provision of the DMCA and, indeed, in the initiation notice for this proceeding, the Register has concluded that she cannot recommend exemptions based on use or user defined categories. *See* "The Scope of the Term 'Class of Works'" 70 Fed. Reg. at 57529 (Oct. 3, 2005). Whatever the possible appeal of the proposed use and user defined exemption, the statute as currently written simply does not support granting an exemption as so defined.

We appreciate the opportunity to respond to the question in your letter and stand ready to respond to any further questions that you or others in the Copyright Office may have on the proposed exemptions.

Sincerely,

Bruce H. Turnbull
Counsel to the DVD Copy Control
Association, Inc.