

February 10, 2012

Library of Congress
United States Copyright Office
Room LM-401
James Madison Memorial Building
101 Independence Ave SE
Washington, DC 20540

RE: Proposed Rule—Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies (COLC-2011-0022)

Dear Sir or Madam:

Thank you for the opportunity to comment on the Copyright Office's proposed rule on the Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies ("the proposed rule"). I am a second year law student at Quinnipiac University School of Law in Hamden, CT; I am commenting in my individual capacity as a person with knowledge of and interest in the area of content protection and conditional access technology.

As you know, the rise of content theft has necessitated content providers to adopt numerous technological means to protect unlawful duplication and distribution of their intellectual property. Despite this legitimate and important goal, Congress nevertheless saw fit to protect the interest of individuals wishing to use content legally.¹ This poses a challenge for content protection technology, as it is often difficult to distinguish between legitimate and illegitimate circumvention. Thus, it is likely that both content and conditional access technology providers would object to *any* exemption to the prohibition on circumvention of their content protection means, even for legal use, in the fear that such allowances will provide additional opportunity for piracy, and/or make existing copyright protection laws more difficult to enforce. I believe that these fears are overblown with regards to the proposed classes for exemption, and that they pose no hazard to the industry's efforts to deter piracy and protect intellectual property. I provide the following examples, specific to a number of classes proposed in the rule, in support of my assertion.

(1) Each of these classes pertains to a small, specific and easily identified group of users. For example, class 7(A) exempts university professors and film/media students, as well as documentary and noncommercial filmmaking from the prohibition. This minimizes the difficulty posed on a company (either the content or the protection provider) who wishes to uncover alleged illegal use, because the user can be easily identified as within the exempted

¹ 17 U.S.C. A. §1201(a)(1)(C) (West 2010).

class. Also, given that these are relatively small groups of users, this exemption will pose no significant obstacle to companies' efforts to detect illegal usage among the wider populace.

(2) Generally speaking, since protective measures are so widely in use in order to prevent piracy, and since copyright law provides for certain legal use of this otherwise protected content, it is necessary and unavoidable that circumvention be permitted in these contexts. Additionally, with regards to the proposed classes in sections 7(A) – 9(D), content providers would suffer no lost revenue from the exemption of these classes, since these users would not otherwise be paying anything additional for the legal reuse of the content.

(3) There may be the concern that legally allowing a small community of users to circumvent content protection may allow circumvention methods to become more widespread and well known amongst individuals looking to use them illegally. However, because legislation already largely bans the tools used for circumvention², there is little risk that these tools will become widely accessible as a result of exempting these groups. In other words, content providers are already comprehensively protected against illegal duplication and distribution of their intellectual property; in fact, it should be noted that even legal use of the copyrighted content is impeded by this protection, which leaves few tools for circumvention available even to those who are permitted to circumvent the protective measures.

This said, I propose that certain language be incorporated in the final rule to better ensure that the means of circumvention pose no threat to content providers, while still ensuring that the exemption for legal use by the identified classes is preserved. Specifically, classes 7(G), 9(A), and 9(B) mention downloading or streaming content. I suggest that the language of these sections clarify that the method of circumvention may not harm or diminish the service that is offering the content. Unlike in the case of DVDs, where all involved equipment can belong to the individual doing the circumvention, downloaded or streamed content involves a server that belongs to another party. It is important to clarify that the server may not be negatively affected in any way. For instance, potentially some means of circumvention may overwhelm the server, causing expense for the company providing the service, while others may involve hacking the server's security measures, compromising the protection of content made available to all users. The language of the rule ought to specifically disallow such means of circumvention, even if the end is for legal use.

For the reasons provided above, I support the proposed rule's goal of making exemptions for the specified classes, and suggest the incorporation above. Thank you again for the opportunity to provide these comments. Please contact me if I may clarify any of the points above. I can be reached by telephone at (732)770-5956, or by email at annbreuer@quinnipiac.edu.

Sincerely,

Ann Breuer

J.D. candidate, Quinnipiac School of Law (expected May 2013)

² 17 U.S.C.A. 1201(b)(1).