

Long Comment Regarding a Proposed Exemption Under 17 U.S.C. 1201 (Proposed Class #8)

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Item 1. Commenter Information

This Comment is submitted on behalf of Entertainment Software Association; Motion Picture Association of America, Inc.; and Recording Industry Association of America (collectively the “Joint Creators and Copyright Owners”). The Joint Creators and Copyright Owners may be contacted through their counsel, Steven J. Metalitz, J. Matthew Williams and Naomi Straus, Mitchell Silberberg & Knupp LLP, 1818 N St., NW, 8th Fl., Washington, D.C., 20036, Telephone (202) 355-7900.

The Joint Creators and Copyright Owners are trade associations representing some of the most creative and innovative companies in the United States.

The Entertainment Software Association (“ESA”) represents all of the major platform providers and nearly all of the major video game publishers in the United States. ESA is the U.S. association exclusively dedicated to serving the business and public affairs needs of companies that publish computer and video games for video game consoles, handheld devices, personal computers, and the Internet. ESA offers a range of services to interactive entertainment software publishers, including but not limited to: a global content protection program; business and consumer research; government relations; and intellectual property protection efforts.

The Motion Picture Association of America, Inc. (“MPAA”) is the voice of one of the country’s strongest and most vibrant industries – the American motion picture, home video and television industry. MPAA works to advance the business and the art of filmmaking and to celebrate its enjoyment around the world. MPAA members include: Walt Disney Studios Motion Pictures; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Twentieth Century Fox Film Corporation; Universal City Studios LLC; and Warner Bros. Entertainment Inc.

The Recording Industry Association of America (“RIAA”) is the trade organization that supports and promotes the creative and financial vitality of the major music companies. Its members comprise the most vibrant record industry in the world. RIAA members create, manufacture and/or distribute approximately 85% of all legitimate recorded music produced and sold in the United States. In support of its mission, the RIAA works to protect the intellectual property and First Amendment rights of artists and music labels; conduct consumer, industry and technical research; and monitor and review state and federal laws, regulations and policies.

Item 2. Proposed Class Addressed

Proposed Class 8: Audiovisual Works—Space Shifting and Format Shifting.

The December 12, 2014 Notice of Proposed Rulemaking (“NPRM”) described this proposed class of works as allowing “circumvention of access controls on lawfully made and acquired audiovisual works for the purpose of noncommercial space-shifting or format-shifting. This exemption has been requested for audiovisual material made available on DVDs protected by CSS, Blu-ray discs protected by AACS, and TPM-protected online distribution systems.” 79 C.F.R. 73,856, 73,862 (Dec. 12, 2014).

Item 3. Overview

The Joint Creators and Copyright Owners oppose this exemption in its entirety. As the Register and the Librarian have concluded in the past, the statutory factors for analyzing fair use claims weigh against a determination that format-shifting and space-shifting are fair uses. *See* Recommendation of the Register of Copyrights, Section 1201 Rulemaking: Fifth Triennial Proceeding, 162-65 (Oct. 12, 2012) (“2012 Recommendation”); Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies; Final Rule, 77 Fed. Reg. 65,250, 65,276 (Oct. 26, 2012) (“2012 Rule”).¹

In addition, the proponents have not and cannot meet their burden of showing that access controls are resulting in decreased access to copyrighted works such that access controls are adversely impacting consumers’ ability to view audiovisual works on a variety of devices and platforms. *See id.* at 165-66; *see also* Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies; Notice of Inquiry and Request for Petitions, 79 Fed. Reg. 55,687, 55,689 (Sept. 17, 2014) (“2014 NOI”).² Given that Public Knowledge seeks a much broader exemption than the proposal it submitted three years ago – one that would allow circumvention of not only DVDs, but also Blu-ray Discs and digital downloads – and has failed to meet its burden of proof, the Register should not recommend that the exemption be granted by the Librarian.

Item 4. Technological Protection Measure(s) and Method(s) of Circumvention

The proponent of this exemption, Public Knowledge, accurately identifies the Content Scramble System (“CSS”) and the Advanced Access Content System (“AACS”) as access control technologies that protect content on DVDs and Blu-ray Discs, respectively. However,

¹ All cited materials from previous rulemaking cycles can be accessed via the Copyright Office website at <http://www.copyright.gov/1201/> under “Past Proceedings.”

² The burden of coming forward with evidence in support of the proposed exemption, as well as the burden of persuasion that the exemption should be recognized on the narrow grounds authorized by the statute, must always remain with the proponent of an exemption. 2014 NOI at 55,689. This burden applies to both factual and legal issues.

Public Knowledge fails to discuss with any detail which access control technologies are involved with circumvention to gain access to audiovisual works “purchased by consumers as digital downloads.” Indeed, Public Knowledge does not offer any definition of “purchased” that would allow for creating distinctions between copies delivered to consumers for the purpose of enabling time-limited or otherwise limited viewing, on the one hand, and those that are delivered to consumers without such limitations placed on the transaction, on the other hand.

Item 5. Asserted Noninfringing Use(s)

Public Knowledge’s claim that space-shifting and format-shifting of all varieties are long-recognized fair uses is incorrect and at loggerheads with the prior determinations of the Register and the Librarian. As the Register’s careful consideration of the four fair-use factors in her 2012 Recommendation demonstrates, not one of the four factors weighs in favor of a conclusion that space-shifting and format-shifting are fair uses.³

- The first factor – the nature and character of the use – weighs against the legality of the space-shifting and format-shifting at issue because such copying is not transformative and does not “advance criticism, comment, or any other interest enumerated in the preamble of Section 107.” 2012 Recommendation at 164.
- The second factor – the nature of the copyrighted works at issue – also weighs against a finding of fair use because creative works, such as motion pictures, “are ‘within the core of copyright’s protective purposes.’” *Id.* (quoting Recommendation of the Register of Copyrights in RM 2008-8; Rulemaking on Exemptions from Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, at 50 (June 11, 2010) (“2010 Recommendation”).
- The third factor also “strongly detracts from a finding of fair use” because space-shifting and format-shifting involves reproducing entire works of authorship for the purpose of creating libraries of the resulting copies. *Id.* at 165.
- Finally, the fourth factor – regarding effects upon potential markets for the works at issue – also weighs in favor of copyright owners. There is no evidence that “the broad sanctioning of this type of copying will not negatively impact” the developing market for the online distribution of motion pictures, as well as other markets. *Id.* Indeed, as testimony from witnesses from MPAA member companies and others will show,

³ Public Knowledge briefly refers to archival/preservation activities as one purported noninfringing use that Class 8 is supposedly designed to cover. The Music Library Association also filed a short comment on that topic. Given that the proponents have failed to offer any proposal for how to limit the class of works to the non-profit, archival sphere, the Joint Creators and Copyright Owners oppose Class 8 in its entirety. If the proponents make an effort to tailor the class to that specific conduct, as opposed to broad-based space-shifting and format-shifting, the Joint Creators and Copyright Owners will consider whether or not to oppose an exemption related to non-profit, archival copying. However, any proposed exemption related to archival activities should, *inter alia*, closely track the requirements contained in 17 U.S.C. § 108.

emerging online services would be harmed by unrestrained space-shifting and format-shifting of the sort Public Knowledge seeks to enable.

Nothing in *Fox Broadcasting v. Dish Network, LLC*, 2015 U.S. Dist. LEXIS 23496 (C.D. Cal. Jan. 12, 2015) should alter the Register's view of space-shifting and format-shifting.

- First, the *Dish Network* decision was issued by a district court in January of this year and final judgment has not been entered. Therefore, it is still subject to appeal and has not been affirmed by the Ninth Circuit or the Supreme Court. As the Register previously concluded, “cases touching upon space shifting confirm that the fair use implications of various forms of space shifting are far from settled.” 2012 Recommendation at 163. The addition of the *Dish Network* case to the list of cases previously reviewed by the Register does not change that fact.
- Second, the *Dish Network* opinion, which does not even analyze the four statutory fair use factors, cites exclusively to *RIAA v. Diamond Multimedia Systems Inc.*, 180 F.3d 1072, 1079 (9th Cir. 1999), for the proposition that space-shifting is noninfringing because it involves copying that supposedly enables personal uses. The Register has repeatedly rejected that interpretation of the *Diamond Multimedia* case, which involved an analysis of the Audio Home Recording Act, not fair use principles. *See, e.g.*, 2012 Recommendation at 162.
- Third, the *Dish Network* opinion addresses claims related to space-shifting of copies of broadcast television programs to enable viewing of copies purportedly created for the purpose of time-shifting. The Register has previously rejected claims that space-shifting content from DVDs is the equivalent of time-shifting broadcast programming. *See, e.g.*, 2012 Recommendation at 162-63.

Item 6. Asserted Adverse Effects

In 2012, the Register concluded that Public Knowledge “failed to demonstrate that the use of a reasonably priced peripheral, a different device, or an online subscription service to access and play desired content do not offer a reasonable alternative to circumvention. In other words, consumers’ inability to ‘access all of their media in a single interface and launch the video of their choice at the touch of a button,’ goes to convenience rather than necessity.” 2012 Recommendation at 165-66 (*quoting* Public Knowledge Petition at 4 (Dec. 1, 2011)). Nothing in Public Knowledge’s current filings undermines these conclusions, which are even more true today than they were three years ago.⁴

⁴ Although Public Knowledge offers some tortured analyses of what percentage of titles Public Knowledge believes to be available online, these analyses are obviously flawed. For example, Public Knowledge attempts to determine what percentage of titles are available online by comparing a list of the DVDs that one of its employees watched through Netflix’s DVD delivery service to the list of titles currently available for online streaming on Netflix. Public Knowledge Class 8 Comments at 14. Of course, it could very well be the case that this employee requested

As discussed further below in Item 7, even more content is available through a variety of sources, both online and offline, and devices, with more licensed features, than ever before.⁵ Enabling consumers to disregard limitations imposed by access controls would only drive up prices, undermine emerging business models and ultimately harm consumers who are eager to embrace the innovation occurring in the marketplace.

Much of Public Knowledge's comment focuses not on adverse effects created by access control technologies, but instead on purported adverse effects caused by everything from "data caps" imposed by wireless carriers and the inaccessibility of broadband in certain communities to Internet "congestion." Public Knowledge Class 8 Comment at 16. These are not the types of adverse effects that Congress intended the Register to consider in this proceeding because they do not result from the use of access controls.⁶

Item 7. Statutory Factors

17 U.S.C. § 1201(a)(1)(C)(i) instructs the Register to consider "the availability for use of copyrighted works" broadly and in historical context. Whether the proposed purpose at issue is currently enabled in the precise manner desired by a proponent is not the only relevant question. Prior to passage of the Digital Millennium Copyright Act ("DMCA"), fair use did not entitle a user to access a work in the format of the user's choosing, and the passage of the DMCA did not alter that fact.⁷

Indeed, the use of access controls has facilitated wider availability of copyrighted motion pictures than ever existed prior to the DMCA. Moreover, digital copying methods that do not involve circumvention are far more prevalent, far more robust, and far more affordable than when the DMCA was enacted. Somewhat paradoxically, the technologies that the petitioner

many of these titles for DVD delivery specifically because they were not available on Netflix for streaming. It could also be the case that some of the titles were available on Netflix at the time that the employee requested the DVDs and were subsequently removed from the online service. Moreover, there is no reason why a consumer who desires to have mobile digital access to all available titles should not subscribe to more than one service.

⁵ Public Knowledge claims that it is very difficult to determine what content is available for online viewing or acquisition. However, they fail to reference the most comprehensive and up-to-date website providing information on titles that are available for online streaming or download, which is the "Where To Watch" website at <http://wheretowatch.com/>.

⁶ See 2014 NOI at 55,690 (proponent must show "that *as a result of a technological measure controlling access to a copyrighted work*, the prohibition is causing, or in the next three years is likely to cause, an adverse impact on those uses") (emphasis added). "Adverse impacts that flow from other sources, or that are not clearly attributable to implementation of a technological protection measure, are outside the scope of the rulemaking." See Report of House Commerce Committee on H.R. 2281, the Digital Millennium Copyright Act, H.R. Rep. No. 105-551, pt. 2 at 37 (1998).

⁷ See *Universal City Studios, Inc. v. Corley*, 273 F. 3d 429, 459 (2d Cir. 2001).

seeks to circumvent are the very technologies that have given rise to the widespread proliferation of market-based solutions that allow the public to do exactly what petitioner seeks an exemption to do. As they have done in the past, the Register and the Librarian should consider that access controls are improving and expanding the audiovisual content available to the public at large, as highlighted by the following recent developments.

- UltraViolet.⁸ Numerous movie studios, retailers, and technology providers have come together to make content available through the UltraViolet platform, including MPAA members Paramount Pictures, Sony Pictures Entertainment, Twentieth Century Fox, Universal City Studios, and Warner Bros. Entertainment. UltraViolet connects consumers with their desired entertainment, on terms which enable broad access and portability. After purchasing a movie or TV show once, it can be added to an online UltraViolet Library at no cost, then instantly streamed and downloaded to a wide variety of devices at home and on the go. With an UltraViolet Library, a consumer has choices for where to buy and watch – at any time, she can choose from a growing number of participating UltraViolet retailers, including Flixster, Nook, Verizon and Vudu (which is owned by Wal-Mart). She can also share her UltraViolet Library with a chosen circle of family and friends. As of September 2014, there were more than 19 million active UltraViolet user accounts in the U.S.⁹ Studies have shown that overall satisfaction with UltraViolet is nearly 90%.¹⁰
- Disney Movies Anywhere. MPAA member Walt Disney Studios also offers a cloud-based platform for enjoying films released by Disney, Marvel and Pixar.¹¹ Since launching in February 2014, the service has enabled consumers to access content across platforms and devices, including iOS, Android, Apple TV, Chromecast, and web browsers. Users simply connect their Disney Movies Anywhere account to their accounts with popular digital retail services, which currently include iTunes, Google Play, and Vudu.¹² Powered by Disney’s KeyChest technology, hundreds of titles purchased through participating digital retailers, or redeemed using the Digital Copy redemption code included in Blu-ray disc packages, are instantly and seamlessly made available to the consumer for both streaming and download across their connected accounts via the Disney Movies Anywhere apps and website. The KeyChest technology is designed to be

⁸ See generally UltraViolet Overview for MPAA Comments in U.S. Copyright Office Docket No. 2014–07, Re: Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, Exhibit 1 attached hereto.

⁹ See Erik Gruenwedel, *UltraViolet Accounts Top 19 Million*, HOME MEDIA MAGAZINE, Sept. 12, 2014, <http://www.homemediamagazine.com/digital-evolution/ultraviolet-accounts-top-19-million-34159>, Exhibit 2 attached hereto.

¹⁰ *Id.*

¹¹ Disney Movies Anywhere, <http://www.disneymoviesanywhere.com/>.

¹² See Erik Gruenwedel, *Disney Movies Anywhere Partners With Vudu*, HOME MEDIA MAGAZINE, Nov. 17, 2014, <http://www.homemediamagazine.com/streaming/disney-movies-anywhere-partners-vudu-34615>, Exhibit 3 attached hereto.

compatible with all digital providers, now and in the future, thus ensuring flexibility, security, and ease-of-use for consumers, content providers, and participating digital retailers.

- Disc to Digital. Vudu and Flixster also offer services whereby consumers who purchased DVDs can obtain low cost digital copies of the films they have collected.¹³ To convert a DVD to a standard definition digital copy through Vudu costs \$2. Conversion to a high definition digital copy costs \$5. Blu-ray Discs can also be converted to high definition digital copies for \$2 (though many Blu-ray Discs are now sold with a license to digital versions for streaming and download included in the disc's purchase price). Once converted, these digital copies are available to the consumer across the platforms of all UltraViolet participating retailers.
- "TV Everywhere" Initiatives. MPAA member companies and other content owners, in conjunction with multichannel video programming distributors ("MVPDs"), continue to expand offerings whereby their customers gain unprecedented on-demand and live streaming access to movies and television programs via the Internet as part of their cable/satellite television subscriptions. These services provide users with the ability to access televised content on their Internet connected devices. Examples of such services include Comcast's XFINITY website and mobile apps,¹⁴ DISH Network's DISH Online,¹⁵ and Verizon's FiOS TV Online.¹⁶ Some MVPDs, such as Cox Communications, allow their customers to view certain live television channels within the home via applications for mobile devices.¹⁷ This complements the existing access by subscribers to significant numbers of shows and movies, often in high-definition, on their television sets at a time of their choosing via video on demand.

In addition to access offered by portals managed by MVPDs as described above, a growing number of cable networks, including HBO,¹⁸ CNN, Cartoon Network, TBS, Cinemax, Showtime, ESPN, The Disney Channel and the Big Ten Network¹⁹ provide access directly to subscribers via branded content portals. These offerings are predicated on protections underlying the ability of content providers to offer secure, authenticated access to authorized subscribers. Authenticated portals from cable networks are offered

¹³ See Vudu Disc to Digital, http://www.vudu.com/in_home_disc_to_digital.html, Exhibit 4 attached hereto. Flixster Disc to Digital, <http://www.flixster.com/D2D/>, Exhibit 5 attached hereto. Flixster's service is currently in beta form.

¹⁴ Watch XFINITY TV Online, <http://xfinitytv.comcast.net/>.

¹⁵ DISH Online, <http://www.dishonline.com/>.

¹⁶ FiOS TV Online, tv.verizon.com/series.

¹⁷ Cox TV Mobile Connect for iPad, <http://itunes.apple.com/us/app/cox-tv-connect-for-ipad/id57696018?mt=8>.

¹⁸ HBOGo, <http://www.hbogo.com/>.

¹⁹ BTN2Go, <http://www.btn2go.com>.

in conjunction with MVPDs, who work together to verify a user is a subscriber of the corresponding television network, and would not be possible without the access control measures which are the subject of these proceedings. In addition to cable networks, many broadcast television networks allow the general public to view popular television programming online on the networks' websites or via apps that rely on authentication to identify MVPD subscribers.²⁰

Increasingly, consumers are also able to subscribe to individual cable channels over the Internet. Notably, HBO is launching its HBO NOW program in April, which for \$14.99 a month will provide access to all HBO original programming and movie options.²¹ Dish Network also has a web-based service that allows access to popular networks such as ESPN, AMC, HGTV and TNT for a monthly fee,²² as does CBS.²³ Sony has also announced that they will start offering Internet-only subscription plans.²⁴

- Download and streaming platforms. In addition to authenticated "TV Everywhere" services, most popular movie and television content is available on mobile phones, computers, and tablets through subscription models and one-time payments. Services include Apple's iTunes,²⁵ Amazon Prime,²⁶ Netflix,²⁷ Hulu Plus,²⁸ and AT&T U-verse Live TV.²⁹ Warner Instant Archive, launched in 2013, is a streaming subscription service that offers access to hundreds of film and TV classics, many in high definition, and is accessible online, through a Roku device, iPad, or Apple TV.³⁰ The website "Where To Watch" provides consumers with information regarding a variety of digital services that make motion pictures available for viewing.³¹

²⁰ E.g., Watch ABC, <http://abc.go.com/shows/abc-updates/news/abc-apps>.

²¹ Emily Steele, *HBO's Streaming Service Will Start in April, Initially on Apple Devices Only*, N.Y. TIMES, March 10, 2015, <http://www.nytimes.com/2015/03/10/business/media/hbo-streaming-to-start-in-april-on-apple-devices-only.html?&moduleDetail=section-news-5&action=click&contentCollection=Media®ion=Footer&module=MoreInSection&pgtype=article&r=0>, Exhibit 6 attached hereto.

²² Sling TV, <https://www.sling.com/>.

²³ CBS All Access, <http://www.cbs.com/all-access/>.

²⁴ Steele, *HBO's Streaming Service Will Start in April*, *supra* note 21.

²⁵ iTunes Video, <https://www.apple.com/itunes/video/>.

²⁶ Amazon Instant Video, <http://www.amazon.com/Instant-Video/b?node=2858778011>.

²⁷ Netflix, <https://www.netflix.com/us/>.

²⁸ Enjoy More Popular, Current Shows, Hulu Plus, <http://www.hulu.com/plus/content>.

²⁹ AT&T U-Verse Live TV, <http://attuniverselivetv.att.com>.

³⁰ Warner Archive, <http://instant.warnerarchive.com/>.

³¹ Where To Watch, <http://wheretowatch.com/>.

In short, the means of accessing a broad array of content continue to grow at a rapid pace. Content owners have worked with a vast network of distributors and providers to ensure broad accessibility to high-quality content outside of the traditional distribution channels.

All of this growth in content distribution is underwritten by the legislative promise of secure and robust protection for such content.³² The DMCA was intended to encourage digital business models – “new ways of disseminating copyrighted materials to users”³³ – that depend upon robust access control measures in order to increase consumer options and promote the flow of copyrighted materials to the public.³⁴ The Joint Creators and Copyright Owners urge the Register and the Librarian to consider how the DMCA and access controls have supported a vast increase in the public’s access to works when considering the propriety of any exemption. Such an exemption would harm the market for motion pictures.

Item 8. Documentary Evidence

Please see the attached Exhibits.

³² The legislative history is clear that this rulemaking was not intended to ensure that every new service enables copying, manipulation, and other uses of every existing work in every new format. To the contrary, the legislative history instructs the Register to take into account increases in the availability of works that are due to access controls, and to grant exemptions only where the existence of access controls and the prohibitions of § 1201(a)(1)(A) have “diminished” the availability of works for lawful uses. *See* Commerce Rep. at 36.

³³ Staff of House Committee on the Judiciary, 105th Cong., Section-By-Section Analysis of H.R. 2281 as Passed by the United States House of Representatives on August 4, 1998, at 6 (Comm. Print 1998), *reprinted in* 46 J. COPYRIGHT SOC’Y U.S.A. 635 (1999) (“Manager’s Rep.”).

³⁴ Congress passed Title I of the DMCA because the existence of TPMs encourages copyright owners to make works of authorship available through new and innovative methods of dissemination. *See* Manager’s Rep. at 8 (predicting DMCA would result in “the availability of copyrighted materials for lawful uses being enhanced, not diminished”). “In assessing the impact of the implementation of technological protection measures, and of the law against circumvention, the[se] rulemaking proceedings should consider the positive as well as the adverse effects of these technologies on the availability of copyrighted materials.” *Id.* at 6.

Index of Exhibits to Joint Creators and Copyright Owners' Class 8 Comment

Exhibit No.	Content	URL (if available)
1	UltraViolet Overview for MPAA Comments in U.S. Copyright Office Docket No. 2014-07, Re: Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies	
2	Erik Gruenwedel, <i>UltraViolet Accounts Top 19 Million</i> , Home Media Magazine	http://www.homemediamagazine.com/digital-evolution/ultraviolet-accounts-top-19-million-34159
3	Erik Gruenwedel, <i>Disney Movies Anywhere Partners With Vudu</i> , Home Media Magazine	http://www.homemediamagazine.com/streaming/disney-movies-anywhere-partners-vudu-34615
4	Vudu Disc to Digital	http://www.vudu.com/in_home_disc_to_digital.html
5	Flixter Disc to Digital	http://www.flixster.com/D2D/
6	Emily Steele, <i>HBO's Streaming Service Will Start in April, Initially on Apple Devices Only</i> , N.Y. Times	http://www.nytimes.com/2015/03/10/business/media/hbo-streaming-to-start-in-april-on-apple-devices-only.html?&moduleDetail=section-news-5&action=click&contentCollection=Media&region=Footer&module=MoreInSection&pgtype=article&_r=0

Exhibit 1



UltraViolet Overview for MPAA Comments in U.S. Copyright Office Docket
No. 2014–07, Re: Exemption to Prohibition on Circumvention of
Copyright Protection Systems for Access Control Technologies
March 2015

Mark Teitell, General Manager & Executive Director, DECE

INTRODUCTION



Why UltraViolet?

Generic "cloud" benefits

UltraViolet benefits



Owning "in the cloud" lets me watch across devices...and not worry about loss

With UV retailers, I get the device reach & features of them all (like my bank ATM!)

When we collect UV titles, we see one single "library" – like our old disc shelf...

UV makes me comfortable because my collection is "portable" – like my mobile phone #





DECE: creator/operator of UV



Partial list from more than 50 members



The image displays a collection of logos for member companies, organized into four main sections:

- Left Column:** FOX, NBC UNIVERSAL, Paramount (A VIACOM COMPANY), Sony Pictures Home Entertainment, Warner Bros., Lionsgate, and BBC Worldwide.
- Top-Left Section:** SONY, MOTOROLA, Panasonic (ideas for life), PHILIPS, TOSHIBA (Leading Innovation >>>), CISCO, and SAMSUNG ELECTRONICS.
- Top-Middle Section:** Microsoft, neustar, intel, Akamai, Adobe, WIDEVINE, deluxe, DOLBY, technicolor, ERICSSON, CSG INTERNATIONAL, dts Digital Entertainment, and IBM.
- Right Section:** sky, COMCAST, vudu HD Movies, nook, COX COMMUNICATIONS, verizon, at&t, CINEPLEX (ENTERTAINMENT), Rogers, Sprint, and Flixster.

HOW IT WORKS

The free UV Library

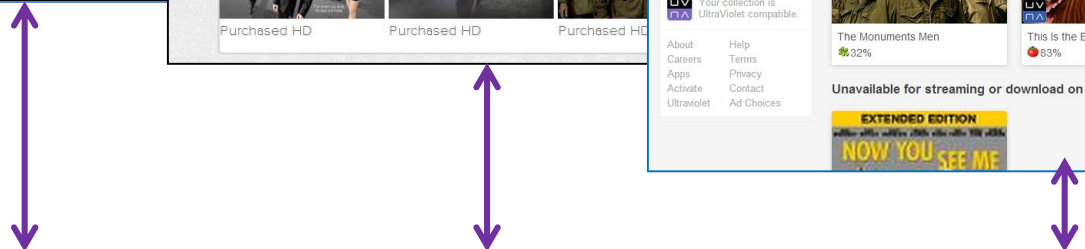


Example: 3 of 10 UV Retailers in US

Vudu interface showing movie listings for 'The Monuments Men', 'This is the End', and 'The Hobbit: The Desolation of Smaug'.

MGO interface showing 'UltraViolet' content for 'The Monuments Men', 'This is the End', and 'The Hobbit: The Desolation of Smaug'.

Flixster interface showing 'Owned' content for 'The Monuments Men', 'This is the End', and 'The Hobbit: The Desolation of Smaug'.



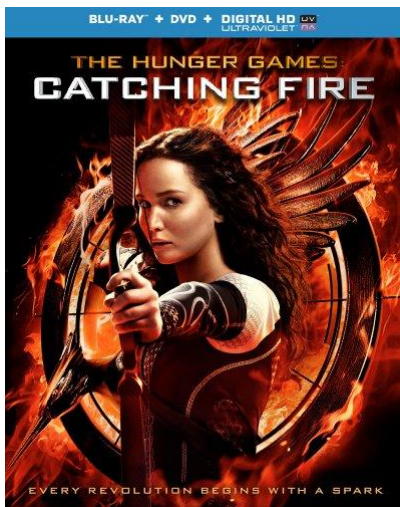
CENTRAL UV ACCOUNT DATABASE – “UTILITY” FOR THE INDUSTRY



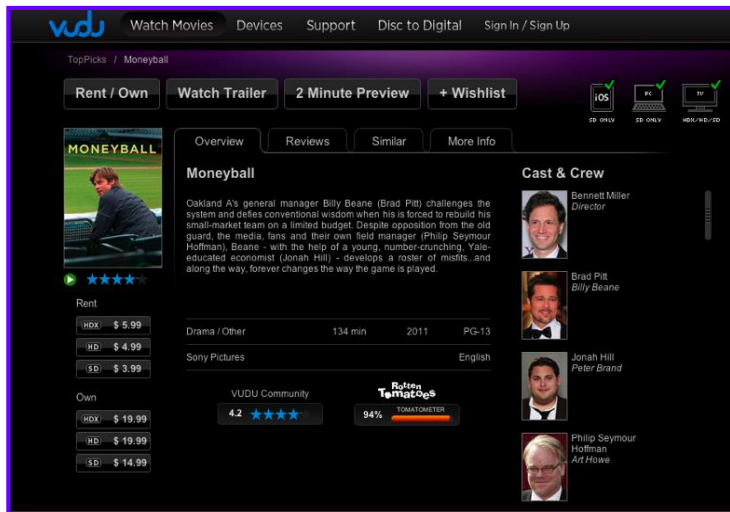
3 ways to add new UV titles



ULTRA VIOLET™



Blu-ray and DVD
Redeem your UV code



Online Movie Stores
Shop via websites and apps



Disc-to-Digital
Upgrade your old discs



Search movies, actors, directors...

0% - 100% Genre: All

DISCOVER

Watch Now

In Theaters

MY MOVIES & TV

Collection 4

+ Want To See 0

★ Ratings 0

MORE

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- Activate
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- Help
- Terms
- Privacy
- Contact
- Ad Choices

Owned



The Monuments Men 32%



This Is the End 83%



The Hobbit: The Desolation of ... 74%

Unavailable for streaming or download on Flixster Learn more



- Purchased Man of Steel Blu-ray during lunch hour
- Visiting Flixster from my PC to add to UV Library



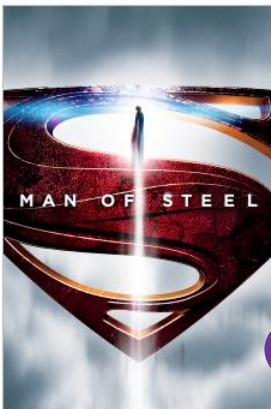
Hi, Mark (Not you?)

[Need Help?](#)

Enter Code

Sign Up / Login

Watch



Add Man of Steel™ to your UltraViolet™ Digital Collection

Now with UltraViolet, your Digital Collection will always be with you to watch and share on computers, smartphones, tablets, game consoles, and connected TVs. Start your Digital Collection by creating your free Flixster and UltraViolet accounts on the next step or log in to existing accounts if you've already signed up.

Enter the redemption code printed on inserts in specially marked Blu-ray and DVD packages.



UltraViolet™

UltraViolet safely and securely stores your movie and TV collection in the cloud.



Flixster

Flixster lets you stream and download your UltraViolet Digital Collection to your favorite compatible devices.

Redemption Code:

[Continue](#)

[Need help with your redemption code?](#)

Redemption valid in the United States only and is not compatible with iTunes. UltraViolet movie includes theatrical version only. © 2013 Warner Bros. Entertainment Inc. and Legendary Pictures Funding, LLC. MAN OF STEEL, SUPERMAN and all related characters and elements are trademarks of and DC Comics.



Hi, Mark (Not you?) [Need Help?](#)


Enter Code [Sign Up / Login](#) [Watch](#)

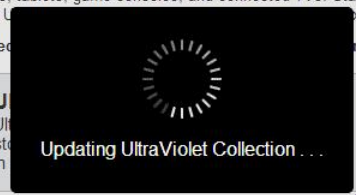


Add Man of Steel™ to your UltraViolet™ Digital Collection

Now with UltraViolet, your Digital Collection will always be with you to watch and share on computers, smartphones, tablets, game consoles, and connected TVs. Start your Digital Collection by creating your free Flixster and UltraViolet account, or sign up for existing accounts if you've already signed up.

Enter the redemption code from your marked Blu-ray and DVD packages.

 **UltraViolet**
Flixster lets you stream and download your UltraViolet Digital Collection to your favorite compatible devices.



Redemption Code:

[Continue](#)

[Need help with your redemption code?](#)

Redemption valid in the United States only and is not compatible with iTunes. UltraViolet movie includes theatrical version only. © 2013 Warner Bros. Entertainment Inc. and Legendary Pictures Funding, LLC. MAN OF STEEL, SUPERMAN and all related characters and elements are trademarks of and DC Comics.



Search movies, actors, directors...

Mark

DISCOVER

- Watch Now
- In Theaters

MY MOVIES & TV

- Collection 5
- Want To See 0
- Ratings 0

MORE

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0% - 100%

Genre: All

Sort By: Date Added

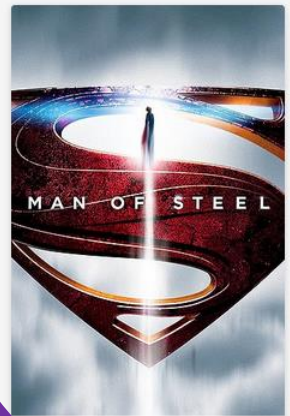
A digital copy of Man of Steel has been added to your UltraViolet collection.



Next step: Upload your DVDs and Blu-rays

Watch without the disc, upload your disc collection to Flixster!

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Man of Steel 50%



The Monuments Men 32%

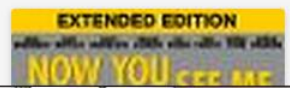


This is the End 83%



The Hobbit: The Desolation Of ... 74%

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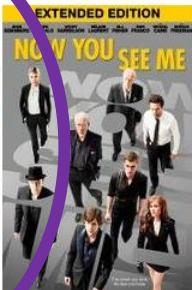

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UltraViolet



Purchased SD



Purchased HD



Purchased HD



Purchased HD



Purchased SD

- 20 minutes later, at home
- Teenage son using M-GO app on smart TV
- There's *Man of Steel* in our UV Library

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• Now adding *Batman Begins...*



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BATMAN BEGINS

Batman Begins (2005)

MPAA PG-13 140 min. | Action

94% 85% Rate Me

Batman Begins explores the origins of the Batman legend and the Dark Knight's emergence as a force for good in Gotham. In the wake of his parents' murder, disillusioned industrial heir Bruce Wayne (Christian Bale) travels the world seeking the means to fight injustice and turn fear against those who prey on the fearful. He returns to Gotham and unveils his alter-ego: Batman, a masked

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Director: Christopher Nolan

Actors: Christian Bale, Michael Caine, Liam Neeson, Katie Holmes, Gary Oldman, Cillian Murphy

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HD SD

Buy \$9.99

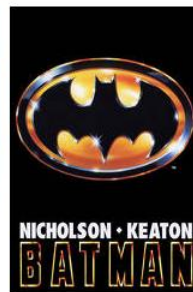
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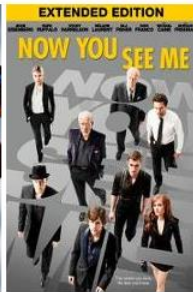
UltraViolet



Purchased SD



Purchased SD



Purchased HD



Purchased HD



Purchased HD



Purchased SD

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Purchase Time

Genre

Any Genre

Year

Any



★★★★★



★★★★★

Man of Steel UV
PG-13 2013

From Warner Bros. Pictures and Legendary Pictures comes "Man of Steel," starring Henry Cavill in the role of Clark Kent/Superman, under the direction ...

Director: Zack Snyder

Featuring: Henry Cavill, Amy Adams, Michael Shannon, Diane ...

Watch Now eGift More Info



★★★★★



★★★★★

- A few days later
- Using VUDU app on game console at vacation house
- There are our two new UV titles





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Genre

Any Genre

Year

Any



★★★★★



★★★★★



★★★★★



★★★★★



★★★★★



★★★★★

- At VUDU, I can also get UV download/stream capabilities for movies I already own on disc

← DASHBOARD

Library (6 items)

🔍 ▼ ↕

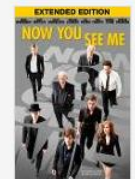
Batman Begins



Man of Steel



The Monuments Men



Now You See Me (Extended Edition) (en)



The Hobbit: The Desolation of Smaug



This is the End

- At the UV account management portal, I can see everything in my Library...
- ...and link directly to the original retailer or other UV retailers

ULTRAVIOLET STATUS UPDATE



UltraViolet Status – Industry Deployment

As of
3/24/15



Content Providers (13)

16,920 titles

Retailers (17)

Territories (13)



As of 3/24/15

- More than 22M household accounts worldwide and growing steadily
 - Over 19M in U.S.
- More than 125M movies and TV shows added to UV Libraries
- Evidence of high consumer satisfaction and intent to continue use



Exhibit 2



UltraViolet Accounts Top 19 Million

12 Sep, 2014

By: [Erik Gruenwedel](#)

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Apple iTunes and Walmart's Vudu.com rank as top digital destinations among UV users, according to the DECE

Consumer interest in cloud-based storage of movies continues to rise, with more than 19 million registered UltraViolet accounts — up 2 million from 17 million accounts at the end of April, a senior executive with the Digital Entertainment Content Ecosystem (DECE) told an industry group.

Speaking Sept. 11 at the ESCA Digital Europe confab in London, Mark Teitell, GM of DECE, the industry consortium that oversees UltraViolet, disclosed there are 1.4 million registered UV accounts in the United Kingdom holding more than 5 million access rights to digital content.

There were about 1.2 million registered accounts in the United Kingdom at the end of 2013, despite no official rollout or promotion, according to the British Video Association. Online reports suggest there are about 160,000 registered UV accounts in Germany, Austria and Switzerland.

Growth of UltraViolet in the U.K. is seen as just beginning with three major retailers set to bow UV-compatible platforms in the next year, according to Teitell.

"The number of U.K. UltraViolet accounts is growing substantially faster than the U.S. even though there has been very little promotion and before any independent retailer has launched with it. There has been strong organic growth, driven by word of mouth and the impact consistent packaging has had on awareness," Teitell said, as reported by *Cue Entertainment*.

Indeed, UltraViolet users are 11 times more likely to have made an electronic sellthrough purchase in the past year, compared to non-users, and four times more likely to own a connected Blu-ray Disc player or other streaming media device, The NPD Group disclosed earlier this year.

"More than one quarter of respondents are buying more content as a result of signing up to UltraViolet, 10% are making more digital purchases and more than a third said they would be more likely to buy digital," Teitell said.

The executive said Walmart's Vudu.com and iTunes rate as the top frequented services among UltraViolet users. Walmart was the first retailer to offer disc-to-digital functionality, which enabled owners of packaged media to access (for a fee) digital versions stored in the cloud.

"Vudu is the second most used service for UV consumers behind iTunes. Home entertainment customers are 15 times more likely to use Vudu if they are a UV user," Teitell said.

The NPD says 61% of users have watched their UltraViolet content on a TV, with Internet-connected TVs and Blu-ray players being the top two devices for the service. Overall satisfaction with UltraViolet is nearly 90%. More than 70% of UltraViolet users report using a computer, and 60% report using a tablet.

"As consumers' ownership of connected devices increases, UltraViolet's role in supporting device interoperability should continue to grow," Justin Bailey, director of industry analysis for NPD, wrote in a blog post earlier this year.

Related Links :

[UltraViolet's Singer: Embrace Disruption](#)

[NPD: UltraViolet Users Buy More Digital Content](#)

[FlixFling Inks EST, UltraViolet Deal With Warner Bros.](#)



About the Author: Erik Gruenwedel

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Exhibit 3



Disney Movies Anywhere Partners With Vudu

17 Nov, 2014

By: [Erik Gruenwedel](#)

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Deal, in effect, links Disney's cloud-based content storage system with industry-backed UltraViolet alternative

Vudu.com has joined Disney Movies Anywhere as a participating retailer, allowing movie fans to access their DMA content through the Walmart-owned digital movie service.

Disney Movies Anywhere (www.disneymoviesanywhere.com), which launched in February with about 400 Disney, Pixar and Marvel titles, utilizes a proprietary cloud-based storage platform, while Vudu is compatible with a number of digital platforms, including UltraViolet — the cloud-based platform supported by other studios.

The agreement coincides with Disney's Nov. 18 launch of the sing-along edition of animated hit *Frozen*, as well as the digital version of Marvel's *Guardians of the Galaxy* (available on disc Dec. 9), which are available through Vudu (www.vudu.com/dma).

"In addition to its robust digital video service, Walmart is a top destination for Blu-ray and DVD purchases, and bringing Disney Movies Anywhere to Vudu enhances the value of those purchases," Janice Marinelli, president of Disney Studio in-home and digital distribution & Disney-ABC content Distribution, said in a statement.

Prior to the deal, some Disney Movies Anywhere codes included with new Blu-rays could also be redeemed at Vudu, allowing consumers to store Disney films at both locations. This new agreement directly links a consumers' accounts to both services.

Disney Movies Anywhere, which bowed with Apple's iTunes iOS operating system, earlier this month expanded availability to Google Play, which uses the competing Android operating system.

For a limited time, users who connect a participating digital retail account receive a free digital copy of Disney's *Wreck-It-Ralph*.

"Vudu's availability across in-home entertainment devices like smart TVs, Roku 3, Xbox One and PlayStation 4 as well as Apple and Android smartphones and tablets means Disney fans can now enjoy their movies on more devices than ever," Jeremy Verba, GM of Vudu, said in a statement.



Related Links :

[Disney Movies Anywhere Comes to Android Devices via Google Play](#)

[Disney Movies Anywhere Adds Pixar Experience](#)

About the Author: Erik Gruenwedel

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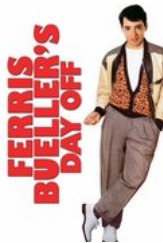
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Exhibit 4

Search for Movies & TV

Search for movies available for Disc-to-Digital conversion

Available now on Disc to Digital



How do I get started using the In-home Disc to Digital service?

The In-home Disc to Digital service is a new feature of our VUDU To Go application. The process is quick and easy and allows you to start storing your DVDs in the cloud in minutes. Put your movies in the cloud in just few simple steps:

1. Download the VUDU To Go application.
2. Click the "Disc to Digital" option tab in the application.
3. Insert a disc.
4. Pick your quality (SD or HD).
5. Repeat step 3 for another disc.
6. Complete the checkout process.

You're ready to enjoy your movies anytime, anywhere, on any VUDU-enabled device!

What is VUDU To Go?

VUDU To Go is an application that allows you to download your movies and TV shows from VUDU to watch offline. The Disc to Digital service is a new feature added to the VUDU To Go application. It lets you convert your Blu-ray™ discs and DVDs to digital copies at home and store them in the cloud so you can watch them anywhere.

Why should I convert my discs to digital?

When you convert your discs to digital copies you can stream them from the cloud to any VUDU-enabled device. Enjoy the convenience of watching your movies without your discs. You'll get to:

- Stream your movies directly to your VUDU-enabled devices such as iPad®, computer, Xbox 360®, PlayStation® 3, Blu-ray player, and HDTV from the cloud
- Upgrade your movies to 1080p and enjoy the best cinema experience possible
- Safeguard your movies by storing them in the cloud forever

UltraViolet is the industry standard for storing your movies in the cloud. All Disc to Digital titles and movies* you own on VUDU are now UltraViolet compatible.

[Search for Movies & TV](#)

Can I visit a Walmart Store to convert my discs to digital?

Yes, the same service is also available at Walmart Stores. Prior to visiting the store visit <http://www.vudu.com/disctodigital> to learn more about the In-store Disc to Digital service.

What if I don't have a DVD or Blu-ray drive?

You can also take your DVDs and Blu-ray discs to Walmart stores and use the In-store Disc to Digital program to convert your discs. Prior to visiting a local Walmart, learn more about the service at <http://www.vudu.com/disctodigital>.

Can I use my DVD drive to convert a Blu-ray disc?

No. DVD drives cannot read Blu-ray discs, but Blu-ray players can read DVDs. You will have to convert your Blu-ray discs with the In-store Disc to Digital program if you do not have a Blu-ray player. Visit <http://www.vudu.com/disctodigital> to learn more about the in-store service.

What operating systems can run the VUDU To Go application?

Currently the application is available for Mac and Windows computers only.

How do I get the In-home Disc to Digital feature?

If you have a Mac or a Windows computer you can go to http://www.vudu.com/in_home_disc_to_digital.html to download the VUDU To Go application to access the Disc to Digital feature.

How much does it cost to convert a DVD or Blu-ray disc to digital and add it to my UltraViolet and VUDU account?

- \$2 per DVD to convert to Standard Definition ('SD')
- \$2 per Blu-ray disc to convert to High Definition with Dolby Digital Plus Surround Sound ('HDX')
- \$5 per DVD to convert and upgrade to HDX

What are the details around the special promotional offer for In-home Disc to Digital?

For a limited time, if you convert 10 or more discs in a single transaction, you'll get 50% off the entire transaction. See below for additional terms and conditions.

What is UltraViolet?

UltraViolet is a new industry standard that allows you to store your movies securely in the cloud. It keeps a permanent record of all your movie purchases so you can build your digital movie collection safely and securely. With UltraViolet, you can now easily access your movies any time, any place, on your favorite connected devices, including your TV. VUDU is the first and only company to offer thousands of titles in UltraViolet, accessible across millions of VUDU-enabled devices.

Do I need an UltraViolet account to use the Disc to Digital service?

Yes, you need to have an UltraViolet account linked to your VUDU account to use the Disc to Digital service. You will need to create a free UltraViolet account in order to use the Disc to Digital service. Once you create your UltraViolet account, any movies from participating studios that you purchase electronically on VUDU, including any past purchases will be automatically registered within your UltraViolet account at no extra charge to you. You will also be able to redeem UltraViolet e-copies offered with select DVDs and Blu-ray discs offered by participating studios.

Can I use VUDU to access UltraViolet movies that I purchased at other retailers and/or redeemed on other services?

Yes, you can stream and download any UltraViolet movies using VUDU, at no extra charge to you, regardless of where they were purchased, provided that: 1) you have registered those movies in your UltraViolet account and 2) VUDU has a licensing relationship with the participating studio or distributor.

Why aren't all of my movies available for Disc to Digital conversion?

The list of movies available for Disc to Digital conversion is comprised of titles that have been legally cleared for digital distribution from studios participating in the UltraViolet program. We expect the number of titles available for Disc to Digital conversion to grow over time.

If I purchase a movie to own on VUDU, will it automatically be added to my UltraViolet account?

As long as the movie is available for UltraViolet redemption and your VUDU and UltraViolet accounts are linked together, the title should be added and accessible through both your UltraViolet and VUDU account. Look for the UltraViolet logo to see if a movie is UltraViolet-compatible.

Does it cost anything to watch my UltraViolet movies using VUDU?

No, there is no cost for watching your UltraViolet movies using VUDU.

Which studios are supporting UltraViolet?

The studios supporting UltraViolet at this time include: Paramount Home Media Distribution, Sony Pictures Home Entertainment, Twentieth Century Fox Home Entertainment, Universal Studios Home Entertainment, Lionsgate Entertainment and Warner Bros. Home Entertainment.

* Movies from participating studios only. HDX is only available on limited VUDU-enabled devices.

Terms and Conditions

For a limited time, if you convert ten (10) or more discs via VUDU's In-home Disc to Digital service in a single transaction (that is, you add ten (10) or more discs to your cart and check-out), you will receive a fifty percent (50%) discount off the pre-tax subtotal conversion fees for that transaction. These promotional discounts (collectively, the "Promotion") may not be combined with other promotions or offers from VUDU or Walmart or its affiliates. VUDU may declare this Promotion to be void where prohibited or restricted by applicable law. Eligibility for this Promotion, conversion of DVDs or Blu-ray discs, and use of the In-Home Disc to Digital service are subject to VUDU's Terms of Service.

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Exhibit 5

Try Disc to Digital, and never lose a DVD again.



Convert your physical DVDs into a digital collection stored in the cloud.
Stream or download your movies at any time on any device!

Free Download

For Windows XP, Vista, 7, or 8

What are the advantages of owning a digital copy of a movie?

Never lose a DVD again! With a digital copy, you can access and watch your movie at any time, on any device.

What devices can I use to watch my movies?

You will be able to stream or download the movie on your computer, iPhone, iPad, Android phone or tablet or TV. [Click here](#) to see a full list of supported devices.

What discs are supported?

There are over [5000](#) DVDs that are supported for disc to digital from Warner Bros, Sony, Universal and Paramount. DVDs from other studios will be added soon.

What discs are not eligible for D2D?

If you purchased a DVD recently and there is a UV redemption code on the cover, [follow this link](#) to add that movie to your collection. Discs that are rented, copied or burned are not eligible for Disc to Digital.



Disc to Digital is available for DVD movies from the above studios.
Television shows and Blu-ray discs are not supported at this time.

Exhibit 6

**MEDIA**

HBO's Streaming Service Will Start in April, Initially on Apple Devices Only

By EMILY STEEL MARCH 9, 2015

HBO has linked with Apple for the start of its much-anticipated Internet streaming service, uniting two premium brands from the media and technology worlds in a quest to reinvent the way people watch television.

Called "HBO Now," the service does not require a traditional TV subscription and will be available exclusively on Apple devices when it makes its debut in early April, the companies announced on Monday during an Apple product event at the Yerba Buena Center in San Francisco.

Timed to coincide with the start of the new season of its most-watched series, "Game of Thrones," the service will cost \$14.99 a month and offer all of HBO's original programming, past and present, as well as its movie offerings. People who subscribe to the service in April through Apple will receive the first month free.

The exclusivity with Apple lasts for three months. HBO also is in talks with other distributors, including traditional TV providers and digital partners.

"This is a transformative moment for HBO," Richard Plepler, HBO's chief executive, said from the stage of the Apple event.

Anticipation for HBO's new digital streaming service has been growing since October, when the company announced plans to start an Internet offering. The new service steps up its rivalry with digital-first streaming outlets like Netflix and Amazon. It also puts more pressure on the established television business, which takes in \$170 billion a year in revenue.

"This is a wake-up call to the industry," said Rich Greenfield, a media analyst with BTIG Research. "HBO is taking its future into its own hands."

The new service is part of a growing wave of offerings this year from media, telecom and technology companies. Dish Network, the satellite provider, recently

unveiled a new web-based service that includes ESPN and several other popular networks for \$20 a month. CBS and Sony also are starting Internet-only subscription plans.

The companies are fighting to stay relevant to a generation of so-called cord-cutters or cord-nevers, who pay for Internet access but not traditional TV subscriptions. As its target audience for HBO Now, the network has pointed to the 10 million homes in the United States with web service but no traditional cable or satellite television subscriptions — half of which are estimated to subscribe to a streaming service.

“That is a large and growing opportunity that can no longer be ignored,” Mr. Plepler said.

The partnership with Apple came together at this time last year after HBO surveyed the market and decided that it was time to get into the streaming business. Mr. Plepler said that he called Eddy Cue, the senior Apple executive in charge of brokering deals with media companies, and pitched the idea. Mr. Cue responded by saying that the timing was impeccable.

“We love HBO,” Timothy D. Cook, Apple’s chief executive, said as he introduced Mr. Plepler at Monday’s event. “Over the years they have created groundbreaking shows that have really become a part of our culture and helped shape our culture.”

Both companies are hoping that they will benefit by being in the halo of the other. Apple will market the HBO service as part of its offerings, including its Apple TV product. The company said Monday it had sold 25 million Apple TV devices and that was cutting the price to \$69 from \$99.

HBO’s three-month exclusive with Apple applies only to other digital outlets — not the traditional cable, satellite and telecom companies that currently sell HBO as part of television bundles. HBO said that it was open to offering a stand-alone streaming service with those companies and that while some have been receptive, others have resisted.

“Deals with our distributors are never easy, but to quote from ‘Godfather II,’ ‘This is the business we’ve chosen,’ ” Mr. Plepler said. “Our position to our partners is: Work with us. We want to help you grow your businesses.”

Some analysts said that while the \$14.99 monthly price represented an attempt by HBO to carefully balance relationships with its current distributors, it also could be a tough sell when compared with the offerings at Netflix, which start at \$7.99 a

month. "You had to get to a price point that your distributors couldn't complain about," said Michael Nathanson, a media analyst with Moffett Nathanson Research.

HBO declined to discuss details of the business relationship with Apple. Apple typically takes a 30 percent cut of revenue generated through apps, and it is unclear how that compares with its split with its traditional distributors.

The initiative is part of a broader growth strategy at Time Warner, which took on more importance internally after the company rejected an \$80 billion takeover bid from Rupert Murdoch's 21st Century Fox last summer. That strategy includes exploiting digital business opportunities, increasing original programming, expanding international business and cutting costs across its television and film properties, which also include Turner cable networks and Warner Bros. film studios.

With the new streaming service, Time Warner and HBO will need to tread carefully so as not to cannibalize their core businesses. Both HBO and other television networks in Time Warner's portfolio depend on their relationships with cable and satellite companies for billions of dollars in revenue.

HBO and its sibling network Cinemax added 2.8 million subscribers in 2014, the most in more than 30 years. The two networks counted about 138 million worldwide subscribers, with about 46 million paid subscribers in the United States. Growth in subscription revenue and licensing fees for select original programming helped increase revenue 10 percent, to \$5.4 billion, at HBO last year.

In comparison, Netflix counted 59 million total paid members, 40 million in the United States.

"This is not about short-term 2015 revenues," Mr. Plepler said. "It is about a strategic move for our future and about building flexibility and optionality into our distribution. This is the right move at the right time with the right partner."

A version of this article appears in print on March 10, 2015, on page B3 of the New York edition with the headline: HBO's Streaming Service Will Start in April, Initially on Apple Devices Only.