

**LIBRARY OF CONGRESS
COPYRIGHT OFFICE**

In the Matter of

Exemptions to Permit
Circumvention of Access Controls
on Copyrighted Works

Docket No. 2023–0005

**COMMENTS OF THE DVD COPY CONTROL ASSOCIATION (“DVD CCA”)
AND THE ADVANCED ACCESS CONTENT SYSTEM LICENSING
ADMINISTRATOR , LLC (“AACCS LA”) ON THE PETITION FOR
RENEWAL OF THE EXEMPTION FOR TEXT AND DATA MINING**

DVD CCA and AACCS LA respectfully object to renewing the current exemption for text and data mining on the prior record, as proponents’ comments in their renewal petition suggest that the facts supporting the prior exemption have changed.

DVD CCA and AACCS LA

DVD CCA, a not-for-profit corporation with its principal office in Morgan Hill, California, licenses the Content Scramble System (“CSS”) for use in the protection of prerecorded audiovisual content distributed on DVD discs against unauthorized access. Its licensees include the owners of such content and the related authoring and disc replicating companies; producers of encryption engines, hardware, and software decrypters; and manufacturers of DVD players and DVD-ROM drives. DVD CCA has participated in this rulemaking since its inception.

AACCS LA, with its principal offices in Beaverton, Oregon is a cross-industry entity founded by Warner Bros., Disney, Microsoft, Intel, Toshiba, Panasonic, Sony, and IBM. AACCS LA licenses the Advanced Access Content System (“AACCS”) technology that it developed for the

protection of high-definition audiovisual content distributed on optical media, such as Blu-ray Discs (“BDs”). AACS LA also offers AACS2, which is a separate technology employed to protect audiovisual content distributed on Ultra HD Blu-ray discs, and that technology is not subject to this exemption. AACS LA has participated in this rulemaking since the Fourth Triennial Proceeding (2008 – 2009 cycle).

The Renewal Petition

The prior rulemaking record has been rendered unreliable for purposes of renewing this exemption in the streamlined renewal process. At the time of the prior rulemaking, the market for large-scale collections of copyrighted works was “nascent but growing[.]” Section 1201 Rulemaking: Eighth Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention at 112-13 (Oct. 2021) (Register’s Recommendation). Specifically, proponents had contended that there was no evidence of the availability of licenses for motion pictures for their desired use. *Id.* at 113. A careful reading of proponents’ current petition suggests that the facts have changed since the grant of the current exemption. Consequently, the Office should consider these new facts in the full rulemaking, rather than in the streamlined renewal process.

Proponents acknowledge that commercially licensed data mining products are made available to researchers.

Commercially licensed text and data mining products continue to be made available to research institutions, as they were at the time of the 2021 exemption and as is reflected in the existing record, but these licensed products do not allow researchers to license the full array of texts and films

Authors Alliance/LCA/AAUP Renewal Petition, Item C (July 7, 2023). However, in the last proceeding, these products were found to be nonexistent (*i.e.*, not available, as opposed to available but somehow insufficient or inadequate) for motion pictures and that factor weighed in favor of

granting the exemption at the time.¹ Thus, if commercially licensed products are now available to researchers, then proponents must explain how these recently-available licensed products available to research institutions are insufficient or inadequate for the uses the proponents intend to make with the benefit of the exemption. As no such discussion exists in either the prior or present rulemaking record, this new development should foreclose the streamlined renewal process for this exemption.

Proponents further indicate that these products include “the emergence of additional licensed access to [] compilations.” By “compilation,” DVD CCA and AACCS LA assume proponents mean that there is one or more new licenses providing access to motion pictures for text and datamining use. While proponents argue that this licensed access to motion pictures is not “material” because they appear to believe the exemption is not available when researchers can avail themselves of licenses for TDM use, this belief is erroneous. No such “specific” limitation exists in the current exemption.² The current exemption does not require a researcher to make use of any license in the marketplace or even investigate whether a license exists or otherwise could be reasonably obtained. Therefore, because proponents’ own petition indicates they are aware of the emergence of licensed access to motion pictures for data mining purposes, then such facts should be developed in the full rulemaking as such licensing opportunities could be a reasonable alternative to circumvention.

¹ The Copyright Office found that “there [were] no large-scale libraries of digital motion pictures available for text and data mining.” Register’s Recommendation at 119 (citing Authors Alliance/AAUP/LCA Class 7 Initial at App. B (Letter from David Bamman). Dr. Bamman states,

while the existence of public-domain datasets of texts (such as Project Gutenberg) and in-copyright secure environments (like the HathiTrust data capsule) allow researchers to explore text data mining methods without risk of implicating §1201, no such pre-existing resource exists for movies or television. Researchers need to create such datasets themselves.

David Bamman, University of California, Berkely Letter at 2.

² Proponents may be confusing their argument with the limitation in the exemption that prevents the creation of a body of motion pictures by circumventing works offered on time limited service such as Netflix.

For the reasons stated above, the renewal of this exemption should be considered in the full rulemaking phase of this proceeding so that a full record for renewing the exemption can be developed based on the development of the marketplace since the original grant of the exemption.

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Respectfully submitted,

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