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David O. Carson
General Counsel
U.S. Copyright Office
P.O. Box 70400
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VIA ELECTRONIC MAIL AND U.S. MAIL

**RE: Docket No. RM 2011-07
Exemptions to Prohibition on Circumvention of Technological Measures that
Control Access to Copyrighted Works (Copyright Office § 1201 Rulemaking)
Proposed Classes 7 and 8**

Dear David,

We write in reply to DVDCCA's July 24, 2012 submission in response to Question 3 of your office's letter of July 3, 2012.¹ We reply on behalf of Michael Donaldson (7D), Jim Morrisette (7D), Gordon Quinn (7D), Laurence Thrush (7D), Peter Brantley (7E), and Bobette Buster (7E).

The record in this rulemaking contains extensive evidence that screen capture methods are technically unacceptable at all stages of the filmmaking production and distribution

¹ Question 3 reads:

Proponents have argued that the use of screen capture software to capture segments of the 2009 Star Trek motion picture was insufficient because of pixelization, dropped frames and poor quality of zoomed in and cropped images, and offered examples of such shortcoming. The Office requests that opponents of proposed Class 7 inform the Office whether they are able to use screen capture software and any editing software to capture the same images from the 2009 Star Trek movie with results that are of sufficient quality for the requested uses. If you are able to do so, please describe the hardware and software products used and the specific steps taken to obtain the results, and submit a copy of the resulting images. Please also either provide copies to the other witnesses addressed in this letter or provide the Copyright Office with permission to provide copies to the other witnesses.

(Internal citations omitted.)

process, and are similarly unsuitable for multimedia e-book authorship.² A decision to reject exemptions for classes 7D and 7E based on the premise that screen capture is a viable alternative to circumvention would profoundly burden the ability of both filmmakers and multimedia e-book authors to make fair use.

The DVDCCA's July 24 submission reinforces this conclusion, as does its decision not to oppose requested class 7D as it pertains to documentary filmmakers.

The Statement of Jim Morrissette, which we have attached hereto as Exhibit A, explains why the test results submitted by DVDCCA are unacceptable as an alternative to circumvention in the filmmaking context. In fact, clips developed using screen capture would severely inhibit or prevent every avenue of film and video distribution—including broadcast, theatrical and festival release, DVD / Blu-Ray, and online offerings such as paid downloads.

Thank you for the opportunity to respond to these questions. We welcome the opportunity to address any additional questions you may have.

Very truly yours,



Jack I. Lerner



Michael C. Donaldson

² See IDA Comment, Appendix D: *Statement of Jim Morrissette on Technical Issues Facing Filmmakers* at 44; Berger Comment at 8, Appendix B: *Statement of Peter Brantley on Multimedia E-books* at 24. See also Transcript of June 4, 2012 Hearing on Exemption to Prohibition on Circumvention of Copyright Protected Systems for Access Control Technologies at 146-53, 161-67, 172-77. See also Letter from Jack Lerner, et al. to David O. Carson, General Counsel, United States Copyright Office (Jul. 18, 2012), available at http://www.copyright.gov/1201/2012/responses/usclaw_donaldson_response_letter_regarding_exemption_7_8.pdf.

EXHIBIT A

STATEMENT OF JIM MORRISSETTE, TECHNICAL DIRECTOR, KARTEMQUIN EDUCATIONAL FILMS, INC.

On July 30, 2012, I downloaded and evaluated the screen capture test results that the DVDCCA submitted using the 2009 *Star Trek* movie DVD and Replay Video Capture Software.

The test results submitted by DVDCCA confirm my conclusion that screen capture software in general, and Replay Video Capture in specific, is totally useless as an alternative to circumvention in the filmmaking context. My conclusion applies to all forms of distribution: broadcast, theatrical and festival release, DVD / Blu-Ray, and online distribution avenues such as paid downloads. In other words, the test results present technical, visual and aural degradation that would cause clips obtained via the Replay Video Capture software to be rejected by broadcasters, film festival selection committees, DVD distributors, and the like.

The technical issues that cause these problems include:

1. Frame Rate and Dropped Frames

The DVDCCA letter states (and I independently confirmed) that the screen capture was done at 25 frames per second. This is not a frame rate that is ever used in this country, and it is not the frame rate of the original DVD. For example, documentaries are released in either 23.98 fps or 29.97 fps. Even at 25 fps, the video file showed many "dropped" and duplicated frames. The frame rate would have to be converted for editing and distribution, but such a conversion would cause unacceptable stuttering of the picture and would cause the video and audio tracks to be out of sync.

2. File Format of Screen Capture

The file format of the screen capture is .mpg, which is a mpeg transport stream with embedded sound. This format cannot be edited in professional editing programs like Avid and Final Cut Pro without transcoding. This step takes substantial time and degrades the video image, causing lost or dropped frames. Such lost frames cannot be replaced with anything except duplicated frames, a process which causes even greater stuttering.

3. Video Image Size and Quality

While the screen captured video image was standard definition 720x480 pixels, it was letter-boxed with black bars at the top and bottom. A direct file obtained from the DVD would be anamorphic, yielding a much larger active image area within the 720x480

frame dimensions. This means that that the screen captured video has approximately 20% lower image resolution. The lower resolution creates a noticeably duller, almost blurred image that is visible to the naked eye. When blown up onto a big screen in a theater, the difference is noticeable and distracting.

It is worth noting again that these problems with the screen capture alternative are so serious that clips with these defects cannot be used for any serious production. Broadcasters and film festivals will reject programs with dropped frames, stuttering, and unnecessary black masks around the picture (letterboxing).

A file obtained directly from the DVD using our current exemption doesn't contain these shortcomings. However, it is important to keep in mind that today, all productions are in high definition. As a result, we need the highest definition content available. If we can't even begin with a proper standard definition file, we won't be able to use DVD material at all.