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In the Matter of

Exemptions to Permit
Circumvention of Access Controls
on Copyrighted Works

Docket No. 2017–10

DVD COPY CONTROL ASSOCIATION (“DVD CCA”) AND
THE ADVANCED ACCESS CONTENT SYSTEM LICENSING
ADMINISTRATOR’S (“AACCS LA”) JOINT RESPONSE TO THE COMMENTS OF THE
COMPUTER CRIME AND INTELLECTUAL PROPERTY SECTION (CCIPS) ON
CLASS 10 (COMPUTER PROGRAMS - SECURITY RESEARCH)

On June 29, 2018, the Register invited comments on a letter submitted by DOJ’s Computer Crime and Intellectual Property Section (CCIPS) (hereafter, “agency”) regarding Class 10 (Computer Programs – Security Research).

DVD CCA and AACCS LA understand CCIPS’ comments to focus on security research in the context of technological protection measures (TPMs) that are employed to serve interests other than the protection of copyrighted content in the form of literary works or audiovisual works. *See, e.g.*, Letter at 3 (referring to the integrity of voting machines and safety of motorized land-based vehicles). While the use of TPMs in these other contexts may serve useful purposes and may protect against access to copyrighted computer programs, the focus that DVD CCA and AACCS LA have in this proceeding is on the use of their technologies to protect audiovisual works.

Since the comments do not cite examples or illustrate concerns in relation to security research applicable to technological protection measures that protect literary works or audiovisual works, the Copyright Office should evaluate the agency’s comments *only* in the context of the examples and concerns addressed in the letter. Read in that way, the comments do not support any modification to the current temporary exemption as applicable to the use of CSS or AACCS technology (including when CSS or AACCS technology is used for DVD or Blu-ray Disc playback as part of a product that may have broader functionality, like the infotainment system in an automobile).

To the extent that the Copyright Office were to read the comments as intending to support proposed changes in the exemption that extend to CSS and AACCS technologies (i.e., playback functions for DVD and Blu-ray Discs wherever that playback may take place), DVD CCA and AACCS LA do object to such changes and note that the letter offers no basis for any

such changes in relation to functions such as DVD and Blu-ray Disc playback either on their own or when such functions are provided as part of a product with other functions.

DVD CCA and AACS LA point out that the letter

- (1) offers support for the good faith requirement as a general matter;
- (2) does not address the proponents' request to eliminate the requirement that the research be "*solely* for the purpose of good faith research"; and
- (3) does not comment on the use limitation and what activities would be permitted.

As far as the products and functions that DVD CCA and AACS LA support, there is no need to remove the "controlled environment" limitation of the current temporary exemption. The "real world" of DVD and Blu-ray Disc playback can surely be replicated successfully in a controlled environment. So, the agency's comments, as noted above, need to be read in the context of other types of devices and associated technological protection measures and do not support any changes that might affect research in relation to DVD and Blu-ray products.

Finally, DVD CCA and AACS LA caution that the comments are inaccurate in their casual reference that the DMCA's purpose is "ultimately to protect the exclusive rights protected by copyright." Letter at 3. While the access control-related circumvention prohibition applies only to those TPMs that meet one of the three tests in Section 1201(a)(2), each of which requires that the TPM generally effectively control access to copyrighted works, the circumvention prohibition of Section 1201(a) does not depend on a nexus between the circumvention and an exclusive right protected by copyright.

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Respectfully submitted,

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