



July 13, 2018

VIA E-MAIL ONLY

Regan Smith
General Counsel
U.S. Copyright Office
Library of Congress
101 Independence Ave. SE
Washington, DC 20559-6000

Re: Docket No. 2017-10 - Exemption to Prohibition Against Circumvention of Technological Measures Protecting Copyrighted Works (Proposed Class 10)

Dear Ms. Smith:

Thank you for your letter of June 29, 2018 regarding Proposed Class 10 (computer programs for security research). On behalf of the Association of American Publishers, the Entertainment Software Association, the Motion Picture Association of America, Inc., and the Recording Industry Association of America (the “Joint Creators and Copyright Owners”), I herein respond to the June 28, 2018 submission of the Computer Crime and Intellectual Property Section (CCIPS) of the U.S. Department of Justice.

Although CCIPS has no statutory role in this proceeding, it does important work enforcing our criminal copyright laws and other laws critical to the nation’s economy and security. Unfortunately, its submission contains an inaccurate and dangerous description of the “purpose of the DMCA.”

As the Register concluded in the Section 1201 Policy Study, and the Ninth Circuit concluded in *MDY Industries, LLC v. Blizzard Entertainment, Inc.*, 629 F.3d 928 (9th Cir. 2010), the purpose of Section 1201(a) goes beyond preventing infringement and includes preventing unauthorized access to copyrighted works, without regard to whether infringement takes place or is enabled. CCIPS’ submission appears to advocate for a contrary view of the statute, in that CCIPS states that “the purpose of the DMCA is to provide legal protection for technological protection measures, ultimately to protect the exclusive rights protected by copyright.” We hope that we are misinterpreting CCIPS’ intent.

We urge the Register not to adopt CCIPS’ language, which is, at best, an incomplete description of the purpose of the DMCA. The Register should strongly reiterate her Section 1201 Study conclusion that, “[i]n adopting section 1201(a), Congress intended to provide copyright owners with a new and independent right to prohibit the circumvention of TPMs used to prevent unauthorized access to their works.”

We have already expressed our views regarding the other issues concerning Proposed Class 10 discussed in CCIPS' submission. Accordingly, we will not reiterate them here, other than to say that the record supports retaining the common-sense, existing limitations on the security research exemption, even if some clarifications are made to its language. CCIPS' submission contains no new evidence that would alter this conclusion.

Finally, it is worth noting that CCIPS' submission is a helpful reminder that the institutions and individuals involved in enforcing our criminal copyright provisions are thoughtful and reasonable actors. Petitioners' over-used and incredible refrain that they fear criminal prosecution by CCIPS under Section 1201 is put into perspective by CCIPS' submission.

The Joint Creators and Copyright Owners appreciate the opportunity to comment on these issues. Please let me know if you have any additional questions.

Respectfully submitted,

/s/J. Matthew Williams
A Professional Corporation of
MITCHELL SILBERBERG & KNUPP LLP

cc: Kevin Amer