



July 26, 2018

VIA E-MAIL TO:

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

Re: Docket No. 2017-10 – Summary of *Ex Parte* Meeting Regarding Exemption To Prohibition Against Circumvention Of Technological Measures Protecting Copyrighted Works (Proposed Class 6)

Dear Ms. Smith:

Thank you for meeting with me on July 24th, 2018. As you know, Dima Budron, an associate at Mitchell Silberberg and Knupp LLP, and Susan Chertkof and David Hughes, from the Recording Industry Association of America, attended with me. Kevin Amer, Nick Bartelt, Anna Chauvet, and John Riley, also attended on behalf of the Copyright Office. This letter summarizes our discussion.

1. We reiterated that the Joint Creators and Copyright Owners oppose expansion of the “jailbreaking” exemptions to cover voice assistants, not only because we introduced significant evidence of harm, but also because the proponents submitted inadequate evidence and legal arguments. The request to cover voice assistants was also procedurally improper. Additionally, there is a statutory exemption that already addresses Congress’ consideration of the privacy issues raised by proponents.
2. We suggested that voice assistants are a nascent technology and that the Register and Librarian have previously declined to issue exemptions covering budding platforms during their infancy, such as Blu-ray discs and tablets.
3. We described why 17 U.S.C. § 1203 provides standing to any person injured by a prohibited act of circumvention and that case law favors using the plain language of the statute to assess who Congress intended to protect against unauthorized access.

Accordingly, a copyright owner whose works are, or are likely to be, accessed without authorization is well within its rights to present evidence of harm in this proceeding regardless who placed an access control that restricts access to works owned by the copyright owner. Market realities also demand such an approach.

4. We answered the Offices' questions regarding access controls utilized in connection with streaming and download services and explained that we believe that jailbreaking devices, including adding ports to export data, enables increased access and copying without proper payment or authorization.
5. We emphasized that, if the Register is nevertheless inclined to recommend that the Librarian issue an exemption to cover voice assistants, then the exemption should be carefully targeted; should be limited only to circumvention to enable privacy or to other specific uses or devices identified in the record; should not allow users to obtain unauthorized access to any work other than firmware; should be limited to lawfully acquired devices and applications; should be limited to installation of lawful applications (*i.e.*, not counterfeit or designed to facilitate unauthorized access or infringement); should specifically exclude certain devices; and should not cover enabling or disabling hardware in any manner that adds or increases the ability to export content from a device.
6. We discussed how the streamlined renewal process could be modified to allow for responses that do not oppose renewal, but instead seek to clarify or update existing regulatory language.

The Joint Creators and Copyright Owners appreciated the opportunity to meet with the Copyright Office on these issues.

Respectfully submitted,

/s/J. Matthew Williams
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MITCHELL SILBERBERG & KNUPP LLP