



July 24, 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 2)

Dear Ms. Smith:

Thank you for meeting with me on July 20th, 2018. As you know, Dima Budron, an associate at Mitchell Silberberg and Knupp LLP, and Ben Sheffner, from the Motion Picture Association of America, Inc., attended with me. Kevin Amer, Nick Bartelt, Anna Chauvet, and Jason Sloan, also attended on behalf of the Copyright Office. This letter summarizes our discussion.

1. We reiterated that the position of AAP, MPAA and RIAA is that the Register should not recommend a class 2 exemption because granting an exemption would require the Librarian to break new ground on the scope of fair use.
2. We highlighted that viable alternatives to circumvention which enable accessibility often exist, including authorized offerings and devices that render motion pictures accessible. Indeed, when my firm attempted to locate accessible versions of titles from the lists of motion pictures that the proponents asserted in their reply comments and post-hearing letter were inaccessible, we found that many of the specific titles were available with closed captioning, and some were available with video descriptions.
3. We emphasized that an exemption could also result in the creation of unprotected copies that could easily be infringed in ways well outside the category of uses that the Register or Librarian might find to be non-infringing in this rulemaking.

4. We expressed that, if the Register nevertheless determines to recommend an exemption under proposed class 2, there are limitations that could be incorporated to draw your conclusions closer to existing precedents and to avoid potential harm. While it is difficult to provide guidance on the drafting process when we are not presented with proposed language for an exemption, we generally shared ideas for clarifying its potential scope, such as: (i) defining who will be covered by the exemption (both those who may circumvent and those who may use the copy, if any, that results from the circumvention); (ii) defining the uses of motion pictures any exemption would allow; (iii) defining the works that may be accessed through circumvention; and (iv) detailing what protective mechanisms must be incorporated into the process to curb any risk of infringement.
5. We noted that MPAA member companies, who acknowledge the importance of accessibility, have strived to increase, and in fact have increased, the number of titles available in accessible formats, both to comply with regulations and also through voluntary initiatives.

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