

**LIBRARY OF CONGRESS  
COPYRIGHT OFFICE**

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 (“AACSLA”) JOINT RESPONSE TO POSTHEARING  
QUESTION FOR CLASS 7 (COMPUTER PROGRAMS - REPAIR)

**Question:**

1. Some proponents have urged the Office to expand the scope of the current repair exemption to allow for circumvention for the purposes of diagnosis and repair of all software-enabled devices. At the hearing in Los Angeles, the Office sought to define a limiting principle that would allow legitimate repair and diagnosis activities while disallowing circumvention that is more likely to lead to infringement.

a. EFF suggested that the scope of the exemption could be defined to cover all software-enabled devices except for “device[s] that [are] primarily ... media playback device[s] for audiovisual works and sound recordings.” Tr. at 143 (Apr. 25, 2018) (Walsh) (on file with U.S. Copyright Office; to be available on Office website). Joint Creators II indicated that they did not endorse this specific proposal but were amenable to assisting the Office in crafting potential exemption language. See *id.* at 144. Please provide your views on regulatory language that would exempt circumvention for the purpose of diagnosis and repair of software-enabled devices, except for devices that are primarily media playback devices for audiovisual works and sound recordings. Please discuss the extent to which such an exemption would accommodate a legitimate need for diagnosis and repair of particular types of devices, including any specific examples of repair activity that would be addressed. To the extent you believe EFF's formulation would present concerns, please suggest any alternative language that could address those issues. Please also provide specific examples of devices with media playback capability that you believe should or should not be covered by the exemption.

b. Joint Creators II have argued that, in the event the Register recommends expanding the existing exemption to additional categories of devices, “only circumvention to access computer programs should be covered by any recommended exemption. Access to other categories of works should be categorically excluded.” Joint Creators II Class 7 Opp'n at 13. Please provide your views on regulatory language that would exempt circumvention for the purpose of

diagnosis and repair of software-enabled devices, but would be limited to circumvention of access controls protecting computer programs and no other category of copyrightable works. Please provide specific examples of devices that would or would not be covered by such an exemption.

**Response:**

DVD CCA and AACS LA are aware of and endorse both the comments made and the recommended language contained in the letter to be filed by the Joint Creators in response to this same question relating to Class 7.

As a general matter, DVD CCA and AACS LA again caution against the expansion of the repair exemption. Section 117 of the Copyright Act limits repairs to the “restor[ation] of the machine to the state of working in accordance with its original specifications and any changes to those specifications authorized for that machine.” 17 U.S.C. § 117. This limitation is likely sufficient to address DVD CCA and AACS LA’s initial concern that the requested exemption would permit undesirable modifications such as the installation and use of a Linux operating system in place of the operating system that was supplied with the original product.

That said, DVD CCA and AACS LA remain concerned that even this language could create tension with copyright owners’ efforts to revoke compromised device keys (or other cryptographic values). Accordingly, the Register should ensure that “repair” not be construed to permit the undoing of the revocation process, which may be employed to protect against compromised device keys (or other cryptographic values).

Carving out media playback devices from the exemption would address both of the above concerns but the “primary purpose” limitation that has been proposed would probably mean that many of the products that play DVDs and Blu-ray discs would not be included within the exclusion to the exemption.<sup>1</sup> In order to fully address these concerns as applicable to the technical protection measures offered by DVD CCA and AACS LA, the media playback function of all other products must also be excluded. Such other products would certainly include computers and game consoles.

As stated above, the language proposed by the Joint Creators would certainly address the above concerns (as well as dealing with the other issues explained by the Joint Creators).

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<sup>1</sup> DVD CCA and AACS LA are concerned that CSS or AACS licensed playback by computers or game consoles would not fall within the proposed language - “devices that are primarily media playback device[s] for audiovisual works and sound recordings.” Since both computers and game consoles are used by many consumers for DVD and Blu-ray disc playback, it is critical that such playback functionality be excluded from any exemption.

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Respectfully submitted,

/s/ Bruce H. Turnbull

Bruce H. Turnbull  
Turnbull Law Firm PLLC  
5335 Wisconsin, Avenue, NW STE 440  
Washington, DC 20015  
202-274-1801  
turnbull@bhtlawfirm.com

*Counsel to DVD CCA and AACSLA*

/s/ David J. Taylor

David J. Taylor  
Right Size Law PLLC  
621 G ST SE  
Washington, DC 20003  
202-546-1536  
david.taylor@rightsize.com

*Counsel to DVD CCA and AACSLA*