



June 11, 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 1)**

Dear Ms. Smith:

Thank you for your letter of May 21, 2018 regarding Proposed Class 1 (audiovisual works for criticism and comment). I herein respond to your questions 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”).

We interpret your letter to request that parties direct you to specific evidence in the record regarding the (in)adequacy of screen-capture technologies for educational uses of short portions of motion pictures in courses that do not require “close analysis of film and media excerpts.” However, we are concerned that proponents will interpret the letter as a request for additional evidence and arguments not presented at the procedurally appropriate time.

The Notice of Proposed Rulemaking (“NPRM”) was very explicit that “[p]ersons wishing to address proposed exemptions in written comments should familiarize themselves with the substantive legal and evidentiary standards for the granting of an exemption under section 1201(a)(1)[.]” Exemptions To Permit Circumvention of Access Controls on Copyrighted Works, 82 Fed. Reg. 49,550, 49,558 (Oct. 26, 2017). The NPRM also informed parties that, “[i]n addressing factual matters, commenters (both proponents and opponents) should be aware that the Office favors specific, ‘real-world’ examples supported by evidence over speculative, hypothetical observations.” *Id.* Finally, the NPRM instructed that “[p]roponents of exemptions should present their complete affirmative case for an exemption during the initial round of public comment, including all legal and evidentiary support for the proposal.” *Id.* (emphasis added).

In response to the NPRM, proponents did not submit sufficient evidence to demonstrate that screen capture is an inadequate alternative for most educational uses. Moreover, DVD CCA and



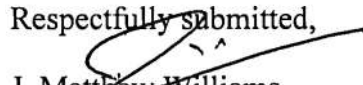
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AACS LA submitted evidence demonstrating that use of screen capture software can create high-quality clips.

The record lacks information indicating that educators and students cannot accomplish noninfringing uses in courses that do not involve close analysis of film and media excerpts without engaging in circumvention or through the use of screen capture software. Accordingly, the existing exemptions should not be expanded through an omission of a requirement that educators and students consider in good faith all available alternatives to circumvention, as well as screen capture, before engaging in other exempted conduct.<sup>1</sup>

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,

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

cc: Anna Chauvet

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<sup>1</sup> If screen capture software reproduces short portions of motion pictures *after* they have been lawfully decrypted, and without avoiding, bypassing, removing, deactivating or impairing another access control, using the software is not a prohibited act of circumvention. However, the Joint Creators and Copyright Owners have not analyzed specific screen capture software products to determine whether some of them involve circumventing encryption or other access controls. In addition, the Register has previously concluded that marketing materials do not tend to provide sufficient information to make this determination. NPRM at 49,559. That is why the current regulations include exemptions for the use of screen capture software. Its inclusion prevents unintentional violations of the statutory prohibition.