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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 May 21, 2018 regarding Proposed Class 10 (computer programs for security research). 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”).

The late submission of the Center for Democracy and Technology’s (“CDT”) report, *Taking the Pulse of Hacking: A Risk Basis For Security Research*, should have little impact on the Register’s recommendations. It should come as no surprise that an organization determined to find support for its belief that Section 1201 and the Computer Fraud and Abuse Act are chilling legitimate security research was able to find twenty anonymous security researchers who, for the most part, agreed with that point of view. This is especially unsurprising given that CDT admits it began its “investigation” by “[u]sing a ‘snowball’ sampling strategy” that involved (i) interviewing researchers CDT already knew were predisposed to agree with its viewpoint and (ii) then asking those researchers to refer CDT to colleagues that were also predisposed to do so.

What is surprising is that CDT could not accomplish such an “investigation” at the procedurally appropriate time given it had years to prepare for this rulemaking. In fact, one take away from the report is that, given the length of time that CDT had to locate likeminded researchers, and the small number it ultimately located, it appears likely that there is a very small cohort of researchers whose work is purportedly being chilled by the current legal landscape.<sup>1</sup>

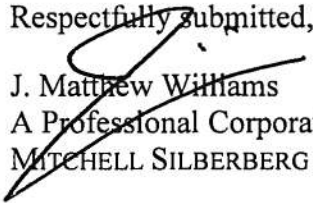
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<sup>1</sup> CDT claims it was “limited by [its] capacity and diminishing returns on the scope and strength of information obtained from additional interviews.” However, CDT is a well-funded organization and it fails to explain why the returns were diminishing after such a small number of interviews.

As discussed in the opposition comments and during the public hearing, the existing regulatory exemption adequately addresses good faith concerns regarding Section 1201(a)(1)(a)'s scope. The proponents have failed to meet their burden to establish that the commonsense limitations contained in the current regulations should be discarded.

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,



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MITCHELL SILBERBERG & KNUPP LLP

cc: Anna Chauvet