



Long Comment Regarding a Proposed Exemption Under 17 U.S.C. § 1201

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ITEM A. COMMENTER INFORMATION

DVD Copy Control Association

The DVD Copy Control Association (“DVD CCA”), a not-for-profit corporation with its principal office in Morgan Hill, California, licenses the Content Scramble System (“CSS”) for use in protecting against unauthorized access to or use of prerecorded video content distributed on DVD discs. Its licensees include the owners of such content and the related authoring and disc replicating companies; producers of encryption engines, hardware and software decrypters; and manufacturers of DVD players and DVD-ROM drives.

Advanced Access Content System Licensing Administrator

The Advanced Access Content System Licensing Administrator, LLC (“AACSLA”), is a cross-industry limited liability company with its principal offices in Beaverton, Oregon. The Founders of AACSLA are Warner Bros., Disney, Microsoft, Intel, Toshiba, Panasonic, Sony, and IBM. AACSLA licenses the Advanced Access Content System (“AACSLA”) technology that it developed for the protection of high definition audiovisual content distributed on optical media. That technology is associated with Blu-ray Discs. AACSLA’s licensees include the owners of such content and the related authoring and disc replicating companies; producers of encryption engines, hardware and software decrypters; and manufacturers of Blu-ray disc players and Blu-ray disc drives.

As ultra-high definition products are entering the marketplace, AACSLA has developed a separate technology for the distribution of audiovisual content in ultra-high-definition digital

format. This technology is identified as AACSS2, and not AACSS 2.0. This distinction in nomenclature is significant, as the latter would suggest that it replaced AACSS distributed on Blu-ray. It has not. AACSS2 is a distinct technology that protects audiovisual content distributed on Ultra HD (UHD) Blu-ray discs, a distinct optical disc format which will not play on legacy (HD) Blu-ray players. To the extent a proposal mentions CSS and/or AACSS, but does not explicitly include AACSS2, such mention should not be inferred to include AACSS2. Indeed, AACSS2 is not subject to the proposed exemptions put forward by any Class 3 proponents.

REPRESENTATIVES

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ITEM B. PROPOSED CLASS ADDRESSED

Proposed Class 3: Audiovisual Works—Accessibility

ITEM C. OVERVIEW

While DVD CCA and AACS LA do not generally object to the proposed modification of the current exemption for accessibility uses, they do request that the Register clarify what is meant by proactive remediation and sufficient quality.

ITEM D. TECHNOLOGICAL PROTECTION MEASURE(S) AND METHOD(S) OF CIRCUMVENTION

The TPMs of concern to DVD CCA and AACS LA are the Content Scramble System (“CSS”) used to protect copyright motion picture content on DVDs and the Advanced Access Content System (“AACS”) used to protect copyrighted motion picture content on Blu-ray Discs.

ITEM E. ASSERTED ADVERSE EFFECTS ON NONINFRINGING USES

DVD CCA and AACS LA historically have not objected to the creation of reasonable exemptions intended to make copies of motion pictures more accessible to people with disabilities. Overall, the proposed modifications seem to address real-life uncertainties that the Register should address. In so doing, the Register should provide more guidance as to the scope of what proponents refer to as “proactive remediation” and to link any revisions related to “quality” to objective criteria. Based on the regulatory language, the circumvention would be warranted “after a reasonable effort, determined that an accessible version of sufficient quality cannot be obtained at a fair market price or in a timely manner”¹ However, the regulatory language does not pose any threshold limitations. Consequently, proactive remediation and assessment of “sufficient quality” may suggest that the requisite determination can be made at any point or for any reason.

¹ 37 C.F.R. § 201.40(b)(2)(i)(B).

If proactive remediation is intended to relieve students with disabilities from the burden of requesting an accommodation and avoiding the lag time between the accommodation request and delivery of the remediated copy, then, of course, remediation should be allowed. Proactive remediation, however, should not be a license to circumvent an entire collection when no particular need has been identified.

Instead, remediation should occur no earlier than at the point the instructor knows or reasonably believes his or her course will make use of a particular work. In the event an instructor has not yet been identified, but the school knows the course will likely make use of the work, then that too should be allowed. Proponents seem to suggest the same. They note that some schools decide “to remediate materials that are commonly used in large classes that are likely to be the subject of future accommodation requests.”² While this example seems to be consistent with what DVD CCA and AACCS LA imagine, proponents’ regulatory language does not have the threshold requirement that actual use of the work is anticipated. As this rulemaking is about enabling actual uses, further clarification of the regulatory language should reasonably align the underlying objective to provide timely remediation for uses that are reasonably expected to be needed.

Similarly, proponents urge revisions to the exemption language to clarify that accessible versions are not considered accessible unless they are of “sufficient quality.” Petitioners note that there exist specific quality standards for closed captioning under FCC regulation. DVD CCA and AACCS LA are unaware of any such objective criteria with respect to audio description. Without meaningful objective criteria, there is a concern that a resulting exemption would be effectively unbounded.

To this end, DVD CCA and AACCS LA are hopeful that proponents will offer regulatory language that meets these concerns while at the same time accomplishing what they believe they need.

² Initial Comments at 11.