



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

Please submit a separate comment for each proposed class.

Check here if multimedia evidence is being provided in connection with this comment

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, AACCS LA has developed a separate technology for the distribution of audiovisual content in ultra-high definition digital format. This technology is identified as AACCS2, and not AACCS 2.0. This distinction in nomenclature is significant, as the latter would suggest that it replaced AACCS distributed on Blu-ray. It has not. AACCS2 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 AACCS, but does not explicitly include AACCS2, such mention should not be inferred to include AACCS2. Indeed, AACCS2 is not subject to the proposed exemptions put forward by any Class 6 proponents.

REPRESENTATIVES

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ITEM B. PROPOSED CLASS ADDRESSED

Proposed Class 6: Audiovisual Works — Space-Shifting

ITEM C. OVERVIEW

For the reasons stated below DVD CCA and AACCS LA object to the creation of the proposed exemption.

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 object to the proposed class to engage in space-shifting for the purpose of a back-up copy. In the Notice of Proposed Rulemaking, the Register noted

that in the 2006, 2012, 2015, and 2018 rulemakings, the Librarian rejected proposed exemptions for space-shifting or format-shifting, finding that the proponents had failed to establish under applicable law that space-shifting is a noninfringing use. The Office invites comment on whether, in the past three years, there has been any change in the legal or factual circumstances bearing upon that issue.¹

While SolaByte Corp. filed the initial petition; it has not filed any initial comments in support of the petition, nor, more importantly, has it provided any legal or factual basis for the Register to consider the request. Free Software Foundation, the only proponent to file supporting comments in the class, provides merely the same manifesto it filed in all the classes. The crux of that comment is “all users have a legitimate right to circumvent controls on audiovisual works, regardless of the medium or the particular use.”

In the 2006 Recommendation, the Register rejected proposing a class that would permit circumvention of DVDs to alter the region code finding the evidence in support of the proposal to be *de minimis*.² In the prior two proceedings (2000 and 2003), she had denied the proposal on more extensive records than what was provided in 2006. In the 2006 proceeding, proponents

¹ Exemptions to Permit Circumvention of Access Controls on Copyrighted Works 85 Fed. Reg. 65293, 65303 (Oct. 15, 2020) (Notice of Proposed Rulemaking “NPRM”).

² 2006 Recommendation at 76.

asserted “that since laptop computers are designed to be usable anywhere in the world, DVDs purchased in different regions, for instance while traveling, should all be accessible on the same laptop computer.”³

Here the statement of proponents, who have filed in every class merely a statement of their belief that all users should have the legal right to circumvent TPMs on all works, for any use, cannot be the factual or legal basis upon which the proposed class can be granted. In the absence of a substantive showing by either the original or subsequent proponents, there is no basis for the Register to consider further the proposed class. Consequently, the proposed class should be rejected.

³ *Id.* at 75.