



August 17, 2021

EMAIL ONLY

Mark Gray
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Re: Re: Ex Parte Meeting Summary -- [Docket No. 2020-11] Exemptions to Permit Circumvention of Access Controls on Copyrighted Works

Dear Mr. Gray and Ms. Counts

On April 13, 2021, I, as counsel for Motion Picture Association, Inc. (MPA), met with Kevin Amer, Jordana Rubel, David Welkowitz, and John Riley of the U.S. Copyright Office concerning Proposed Classes 1 and 5 in the above referenced rulemaking. I focused on MPA's opposition to the requests to allow remote streaming of motion pictures, especially of full-length motion pictures. I explained that MPA considers the current record to be very similar to the record from the 2018 proceedings. However, I also emphasized that even more motion pictures are available for licensed educational and library digital uses of motion pictures than was true three years ago. Thus, the proposed exemptions should be denied, and if the existing educational exemptions are nevertheless expanded, any new regulations should not allow for full-length streaming. No factual or legal changes identified by the proponents justify granting their requested expansions.

I also highlighted that MPA opposes proponents' request for an exemption that would cover all circumvention of certain motion picture formats for any educational uses that may qualify as lawful under Sections 107, 110, and 112. That proposal is inconsistent with the proceeding's ground rules, as it is equivalent to an "all lawful uses" of motion pictures exemption. Exemptions must contain specific factual parameters.

Finally, I responded more specifically to the ex parte letter filed on Proposed Class 5, which appeared to narrow the scope of the requested exemption. I reiterated MPA's opposition to the exemption even if it was narrowed as discussed in the letter. The proposal is inconsistent with Section 108 and with the Office's recommendations from its prior Study of Section 108. That Study suggested that used replacement copies may be sufficient, for example. I also focused on how the Proposed Class is more accurately classified as a space shifting exemption than a

preservation – or even replacement copy – exemption. I also distinguished motion pictures from the computer programs covered by an existing preservation exemption.

The Office asked me about what types of market checks beneficiaries should engage in prior to circumvention if the Office determined that an exemption for Proposed Class 5 should be recommended. I listed a number of possibilities, including without limitation using search engines, checking Copyright Office records, checking online retailers and services, and checking with potential or known copyright owners. This was a non-exhaustive list, and the burden should be on the proponents to identify a satisfactory market check process.

The Office also asked me whether K-12 schools and students are differently situated than colleges and universities for purposes of Proposed Class 1. I acknowledged there are potentially differences with respect to resources, but there also appears to be less of a need to stream full-length motion pictures for K-12 schools. Few K-12 schools are likely to offer the kinds of courses, such as film studies, where watching full-length motion pictures is necessary. Also, there is a tremendous amount of lawful content already available for use by K-12 schools that enables a rich educational experience, even during the pandemic.

We appreciate the Office's time and its consideration of these issues.

Respectfully submitted,

/s/ J. Matthew Williams
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