



MITCHELL SILBERBERG & KNUPP LLP
A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

J. Matthew Williams
Partner
(202) 355-7904 Phone
(202) 355-7984 Fax
mxw@msk.com

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Regan A. Smith
General Counsel and Associate Register of
Copyrights
U.S. Copyright Office
101 Independence Ave. S.E.
Washington, D.C. 20559-6000

Re: [Docket No. 2020–11] Exemptions to Permit Circumvention of Access Controls on Copyrighted Works, Partial Opposition to Renewal Petition of OTW Concerning the Use of Excerpts of Motion Pictures in Noncommercial Videos

Dear Associate Register Smith:

I submit this letter on behalf of the Entertainment Software Association (“ESA”), the Motion Picture Association (“MPA”), and the Recording Industry Association of America (“RIAA”). They do not oppose renewal of the “noncommercial videos” exemption as it now appears in the Code of Federal Regulations, as requested by New Media Rights. However, they do oppose the petition submitted by the Organization for Transformative Works (“OTW”), which seeks to alter the exemption.

The Notice of Inquiry (“NOI”) clearly stated: “Renewal may only be sought for current exemptions as they are currently formulated, without modification.” 85 Fed. Reg. 37399, 37401 (June 22, 2020). But OTW requests that the Librarian revert to language that the Librarian adopted in 2010 at the culmination of the rulemaking proceeding that began in 2008 – not the current regulatory language. For that reason alone, OTW’s request should be denied.

As discussed in separate comments on multiple exemptions filed by AACCS LA and DVD CCA, the Register should also carefully scrutinize OTW’s petition, and all of the streamlined renewal petitions, to consider whether the examples of alleged exemption use provided in the petitions fall within the parameters of the existing exemptions. For example, OTW’s petition vaguely references circumvention to copy a video for purported preservation purposes. Preservation, however, is outside the scope of the “noncommercial videos” exemption and should not be used as a basis for its renewal. In all instances where petitioners rely upon examples of alleged exemption use that fall outside the currently defined exemption parameters in arguing for continuation of the exemptions, the Register should proactively reference those parameters and reject improper interpretations of the exemptions from the renewal petitions. Otherwise,

exemptions may be expanded, at least in the minds of petitioners, by default without proper proceedings.¹

Following the ground rules for the streamlined renewal process is critical to its legitimacy and to maintaining clarity with respect to the exemptions' meaning. My clients did not oppose the adoption of the streamlined renewal process and, as stated, do not oppose renewal of the "noncommercial videos" exemption with the exact language in the current Code of Federal Regulations. But they do oppose OTW's request to change the language and to deviate from the procedural rules clearly stated in the NOI.

Respectfully submitted,

/s/ J. Matthew Williams
Partner of
MITCHELL SILBERBERG & KNUPP LLP

Cc: Kevin R. Amer, Deputy General Counsel

¹ Petitioners should also provide support for a continued need for each aspect of each existing exemption. For example, neither OTW nor New Media Rights provides any example of noncommercial videos produced for paid commissions, but such videos are covered by the existing exemption.