

**LIBRARY OF CONGRESS
COPYRIGHT OFFICE**

In the Matter of

Exemptions to Permit
Circumvention of Access Controls
on Copyrighted Works

Docket No. 2020 – 0011

**COMMENTS OF THE DVD COPY CONTROL ASSOCIATION (“DVD CCA”) AND
THE ADVANCED ACCESS CONTENT SYSTEM LICENSING ADMINISTRATOR
(“AACCS LA”) ON THE PETITION FOR RENEWAL OF THE EXEMPTION FOR
EXCERPTS FOR NONFICTION MULTIMEDIA E-BOOKS**

DVD CCA and AACCS LA do not object to streamlined renewal of the exemption to the extent it applies to “e-books offering filming analysis” as proponents request.¹ They do, however, object to renewing the broader exemption for nonfiction multimedia e-books, which the current exemption was expanded in the last proceeding to authorize.² DVD CCA and AACCS LA acknowledge the laudatory goal of the exemption to be the catalyst to launch a multimedia e-book market. Nine years later, however, no such market exists, even with the recent expansion of the exemption beyond those offering film analysis to cover all nonfiction multimedia e-books. Thus, if proponents are indeed requesting renewal of the exemption for the benefit of Buster to pursue her project, or, for that matter, for other authors of multimedia books focused on film analysis, which arguably require DVD or Blu-ray quality video clips for the close analysis

¹ Bobette Buster *et al.*, Renewal Petition, Item C ¶ 4 (July 22, 2020) (“Bobette Buster is [among other things] author of the e-book Deconstructing Master Filmmakers[.]”).

² See 37 C.F.R. § 201.40(b)(1)(i)(c) (permitting circumvention “for the purpose of criticism or comment: For use in nonfiction multimedia e-books.”).

expected of film analysis, then DVD CCA and AACCS LA do not object. However, as explained below, Buster’s private use is insufficient for the renewal of the current expanded exemption, which extends to all nonfiction multimedia e-books.

The only evidence of use the renewal proponents cite is Bobette Buster’s ongoing e-book project.³ “Buster continues to work on an e-book series, based on her lecture series, “Deconstructing Master Filmmakers: The Uses of Cinematic Enchantment”⁴ This is the same project that proponents have cited over multiple proceedings.⁵ Proponents effectively concede that they have no other examples of use. “Her continuing work on the same project is sufficient”⁶ DVD CCA and AACCS LA can find no evidence that the e-book series has ever been published or otherwise released to the public. Consequently, Buster’s alleged use now over multiple proceedings essentially amounts to mere personal use.

To the extent the proponents are requesting renewal of the full exemption, the failure to provide any example of use of this expansion to all nonfiction works beyond film analysis should render the exemption’s expanded nonfiction uses ineligible for the streamlined renewal process. The Notice of Inquiry provided that the streamlined renewal process is available only upon a “conclusion this evidence remains reliable to support granting an exemption in the current proceeding.”⁷ Without any evidence of uses in other nonfiction multimedia e-books beyond those

³ Proponents may cite only Buster’s use because they are only seeking the renewal of the exemption for the benefit of film analysis.

⁴ Bobette Buster *et al.*, Renewal Petition, Item C ¶ 4 (July 22, 2020).

⁵ *Id.* ¶ 4 (“as she conclusively demonstrated during the sixth and seventh triennial review in 2015”).

⁶ *Id.*

⁷ Notification of Inquiry and Request for Petitions, Exemptions to Permit Circumvention of Access Controls on Copyrighted Works, 85 Fed. Reg. 37399, 37401 (June 22, 2020).

offering film analysis, there is no basis for the Copyright Office to reach this necessary conclusion to support renewal.

Buster’s use cannot stand in for the missing evidence of use in other nonfiction multimedia e-books, especially as her own purported use for film analysis in multimedia e-books appears still not to have emerged so as to benefit the public. That use, promised now over multiple proceedings, has never materialized in any meaningful way. Consequently, the purported use cannot demonstrate to the Copyright Office that the expansion of the exemption proved necessary to avoid a likely substantial adverse impact on the ability to engage in the alleged noninfringing use, much less its extension in the expanded form is necessary to do so.⁸

For the reasons stated above, the Copyright Office should renew the current exemption – as the proponents have requested – only for use in e-books offering film analysis.

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Respectfully submitted,

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⁸ Indeed, this exemption has historically suffered from the requisite record evidence required of most exemptions, and instead the Copyright Office has relied on analogy to justify the exemption. *See, e.g.*, Section 1201 Rulemaking: Sixth Triennial Proceeding, Recommendation of the Register of Copyrights at 77 (October 2015) (“the case of multimedia e-books the record with respect to proposed uses was leaner than others”) (“2015 Recommendation”); *Id.*, Seventh Triennial Proceeding, Recommendation of the Acting Register of Copyrights at 87 (October 2018) (“The record does, however, support expansion to nonfiction multimedia e-book beyond film analysis. The Acting Register finds that the desire to engage in criticism or commentary is a critical factor in deciding to expand the existing exemption to nonfiction multimedia e-books beyond film analysis.”) (citing 2015 Recommendation at 100).