

**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  
COMPUTER PROGRAMS THAT CONTROL SMARTPHONES, HOME APPLIANCES,  
OR HOME SYSTEMS, FOR DIAGNOSIS, MAINTENANCE,  
OR REPAIR OF THE DEVICE OR SYSTEM**

DVD CCA and AACCS LA do not object to renewal of the exemption permitting, in part, circumvention of computer programs on a “home appliance or home system, such as a refrigerator, thermostat, HVAC, or electrical system[.]” 37 C.F.R. § 201.40(b)d(10)(ii). However, DVD CCA and AACCS LA respectfully request the Copyright Office expressly to reject the implied assertion that some of the activity used as examples in the renewal petition, as explained below, is permitted under the current exemption. Furthermore, the Copyright Office should also remind the parties that the “right to repair” exemption does not extend to circumvention of the standard and legitimate operation of the Content Scramble System (“CSS”) or the Advanced Access Content System (“AACCS”) – including the function of device key revocation – used in protecting copyrighted works distributed on DVDs and Blu-ray discs against unauthorized access.

## **DVD CCA and AACCS LA**

DVD CCA, a not-for-profit corporation with its principal office in Morgan Hill, California, licenses the Content Scramble System (“CSS”) for use in the protection of prerecorded audiovisual content on DVD discs against unauthorized access or copying. 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. DVD CCA has participated in this rulemaking since its inception.

AACS LA, with its principal offices in Beaverton, Oregon is a cross-industry entity founded by Warner Bros., Disney, Microsoft, Intel, Toshiba, Panasonic, Sony, and IBM. AACS LA licenses the Advanced Access Content System (“AACCS”) technology that it developed for the protection of high definition audiovisual content distributed on optical media, such as Blu-ray Discs (“BDs”). AACS LA also offers AACCS2, which is a separate technology employed to protect audiovisual content distributed on Ultra HD Blu-ray discs, and that technology is not subject to this exemption. AACS LA has participated in this rulemaking since the Fourth Triennial Proceeding (2008 – 2009 cycle).

### **The Example Is a Proposed Modification**

Electronic Frontier Foundation (“EFF”) provides an example of a dubious “repair” that – if permissible under a newly “renewed” exemption – could be misconstrued to harm the DVD and Blu-ray player ecosystems.<sup>1</sup> The example involves the smart-speaker manufacturer Sonos’ decision to no longer provide software updates to products sold before 2015. Sonos notified its

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<sup>1</sup> Since EFF at no time suggests TPMs actually played a role in the Sonos example, the example should not play a role in the Copyright Office’s consideration.

affected customers that this decision would eventually disrupt access to services and functionality of the obsolete speakers. According to EFF, Sonos' customers "should have [had the option to] to repair any disrupted functionality on their own or with third-party assistance, even if that means circumventing [technological protection measures ("TPMs")]." EFF, Renewal Petition, Item C ¶ 4 (July 22, 2020).

DVD CCA and AACS LA work regularly with content owners and manufacturer licensees to cooperatively address threats to the integrity and security of the respective CSS and AACS content protection technologies, which protect the delivery of high value digital audiovisual content. Associated with the technologies are licensing schemes, which include compliance and robustness rules. Those rules provide instructions for agreed-upon device behavior in a variety of content delivery circumstances. To protect against threats of unauthorized access to, and unauthorized reproduction and distribution of, high value content, these rules require specified limits to certain playback device functionality. For example, the rules require that image resolution be set to a lower definition when the content is transmitted from the playback device out of unprotected video outputs. These compliance rules concerning playback device operation and function serve as integral components of the overall CSS and AACS technological protection measures. In certain cases, the rules provide that functionality can be disabled completely. (For example, keys issued for use in a licensed player can be revoked (meaning that new movie discs incorporating the revocation will not play back in the particular product) because its associated device key for content decryption was compromised by hackers and used to facilitate unauthorized access to protected content).

Furthermore, these compliance rules governing playback device operations are all set forth in detail in the respective licenses for the TPMs that playback device manufacturers and

content owner/distributors must enter into in order to employ the technological protection measures. Therefore, notwithstanding a product's theoretical capabilities, a licensee manufacturer may limit the performance of a product in accordance with standard rules associated with the relevant TPMs. And in appropriate cases, a licensee manufacturer may outright deactivate one or more functions due to the product's TPM being compromised. These results are not the consequences of the product falling out of repair or breaking. Just the contrary. The product is indeed functioning as designed, delivering high-quality content to the consumer under the conditions that the product was manufactured and sold. To the extent that these circumstances involving the rules and functions of playback devices governed by the CSS and/or AACS TPM licenses could be viewed as "disrupted functionality," as characterized by EFF, then DVD CCA and AACS LA reject the assertion that consumers should be allowed to "repair any disrupted functionality on their own or with third-party assistance, even if that means circumventing TPMs."

The right to repair exemption does not readily extend to EFF's example.<sup>2</sup> Indeed, EFF does not even assert a TPM in the Sonos products prevented consumers from making the "repair" that EFF advocates for. In the last proceeding, other than proponents' quick references

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<sup>2</sup> The EFF example falls outside the "right to repair" exemption, which permits circumvention of home appliances and systems. While people in everyday parlance may refer to speakers in the home as a "sound system," this casual reference tends to ignore the fact that a sound system is an integral component of a larger entertainment system. Entertainment systems permit consumers to enjoy, among other things, copyrighted works played back on DVD and Blu-ray players. The EFF example should be viewed in light of the Copyright Office's effort to consider entertainment systems in vehicles, and preservation of obsolete software by libraries, etc. Accordingly, this exemption, serving home appliances and systems, simply cannot be stretched to include entertainment systems (or sound systems) without more consideration. Thus, EFF should not—in a petition styled as a renewal request—be permitted to shoehorn this example into an exemption for a use that was clearly not contemplated.

to “players,” there was no record evidence developed around an entertainment product, device, service, or peripheral to support the exemption being applied as EFF now asserts. If the Copyright Office had considered developed record evidence, then DVD CCA and AACS LA believe the Copyright Office would have found that such a category would more closely approximate the analysis for video game consoles. Opponents to the creation of an exemption for game consoles have repeatedly argued that circumvention of TPMs on video game consoles creates risk of unauthorized access to content and piracy, because the TPMs also protect access to the games themselves.<sup>3</sup> As the Copyright Office stated in its 2018 Recommendation with respect to exemptions sought for video game consoles:

In multiple past rulemakings, the Office has rejected proposed jailbreaking exemptions for video game consoles—including passing suggestions of the need to repair these consoles—because of the potential harm to the market.

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[C]ircumvention of access controls to permit interoperability of video game consoles—regardless of purpose—has the effect of diminishing the value of, and impairing the market for, the affected code, because the compromised code can no longer serve as a secure platform for the development and distribution of legitimate content.<sup>4</sup>

CSS and AACS technologies and their respective licenses provide instructions to manufacturers to create the very code that make their respective players a secure platform for the distribution of high-quality copyrighted content. Accordingly, any alleged need to repair a DVD or Blu-ray player does not outweigh copyright owners’ legitimate expectation that they can be confident in the delivery of their high-quality content on the secure DVD and Blu-ray players platforms.

In light of the above, DVD CCA and AACS LA respectfully request the Copyright Office

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<sup>3</sup> Section 1201 Rulemaking: Seventh Triennial Proceeding Recommendation of the Acting Register of Copyrights at 205 (citations omitted) (October 2018) (“2018 Recommendation”).

<sup>4</sup> 2018 Recommendation at 206 (citation omitted).

to issue any renewal of this exemption specifically on the terms granted in the prior proceeding and reject the commentary from EFF that could be read as an expansion permitting circumvention of CSS or AACS on DVDs or Blu-ray discs and with respect to DVD or Blu-ray playback devices, respectively.

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Respectfully submitted,

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