

**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 THE
PURPOSE OF CRITICISM AND COMMENT IN FILMMAKING**

DVD CCA and AACCS LA do not object to the renewal of the exemption; however, they do object to the characterization of the exemption filed by the filmmaking proponents. While suggesting that that the exemption broadly permits fair use and noninfringing uses, the petitions fail to observe that any such use must be only for the purpose of criticism or comment in documentary filmmaking or other films where the clip “is used in parody or for its biographical or historically significant nature.” 37 C.F.R. § 201.40(b)(1)(i)(A). To the extent that the petitions cast the exemption as permitting any fair use or any noninfringing use, DVD CCA and AACCS LA object.

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 (“AACS”) 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 AACS2, 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 Exemption Is More Limited Than Proponents Suggest

DVD CCA and AACS LA do not object to the renewal of the exemption for the purposes of criticism or comment in documentary filmmaking or even in other films where the motion picture clip is used in a parody or for its biographical or historically significant nature. Yet the petitions filed by International Documentary Association, Film Independent, and Kartemquin Educational Films (“Joint Filmmakers”) and the New Media Rights (“NMR”) fail to reference any uses pertaining to

- criticism or comment;
- documentary filmmaking or
- any filmmaking that would make use of a clip in a parody or for its biographical or historic nature.

Instead, the proponents effectively seek to expand the exemption to cover all fair use or noninfringing uses by presenting such expanded coverage as an assumed aspect of their petitions:

As was the case when we petitioned for the current exemption . . . , filmmakers will not be able to access the material they need in order to make **fair use**. Technological protection measures such as encryption continue to prevent access to nearly all **fair use** material filmmakers need We do know [] of many filmmakers who will need to make **fair use** during the next triennial period but will not be able to do so without an exemption to 1201.

[W]ithout a renewal of this exemption, § 1201 will have an adverse effect on filmmakers seeking to make **fair use**[.]

International Documentary Association, Film Independent, and Kartemquin Educational Films, Renewal Petition, Item C ¶¶ 4-5 (July 22, 2020) (bold added). After parroting the Joint Filmmakers’ statements, NMR in its own separate renewal petition adds, “There continues to be no reason that filmmakers should be denied access to copyrighted works when they make an otherwise lawful use of a copyrighted work.” New Media Rights, Renewal Petition, Item C ¶ 4 (July 22, 2020).

These statements should not be casually dismissed as layman confusion about the legal nature of the exemption. In the past proceedings, the same filmmaking proponents have sought an exemption permitting any fair use, and have regularly conflated evidence of alleged fair use for the use of criticism or comment permitted under the exemption.¹ In fact, the 2018 Recommendation reminded the proponents that “the existing exemption is limited to criticism and comment, which is narrower than fair use generally[.]”²

The purpose of the streamlined renewal process is to consider renewal of the current exemption as-is, and the instant exemption has been carefully crafted to facilitate criticism or comment in documentary filmmaking and most recently expanded to permit criticism or

¹ See, e.g., Section 1201 Rulemaking: Seventh Triennial Proceeding, Tr. 92:12-93:24 (Apr. 11, 2018) (discussing at the hearing alleged fair uses made in films other than documentary films).

² *Id.*, Recommendation of the Acting Register of Copyrights at 87 (citations omitted) (October 2018) (“2018 Recommendation”).

comment in other films where the clip would be used in parody or for its biographical or historical nature. Those are the specific uses authorized and, if the proponents are once again seeking to expand the exemption to “fair use generally,” then such a modification must be submitted and considered as a new proposal in this rulemaking. Accordingly, DVD CCA and AACS LA object to the characterization of the exemption and permitting any modification of the current exemption during the streamlined renewal process of the rulemaking.

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Respectfully submitted,

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