

**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 NONCOMMERCIAL VIDEOS**

DVD CCA and AACCS LA do not object to the renewal of the exemption for noncommercial videos; however, they do object to the proposed change in the language of the exemption advanced by the Organization for Transformative Work (“OTW”). While the Copyright Office will hopefully recognize this request as a modification, despite being presented as a renewal, DVD CCA and AACCS LA establish their objection on the record because, in the last proceeding, proponents had argued that their proposed language should be accepted because “[DVD CCA, AACCS LA and the Joint Creators] did not challenge any of this language in the existing exemption when it was petitioned for renewal.”<sup>1</sup> As explained below, OTW’s request, on its face, is clearly not a renewal request, but is actually a request for a modification that should be rejected. As a modification, the proponents should have the burden of advancing their proposed language change as a new exemption proposal.

---

<sup>1</sup> Section 1201 Rulemaking: Seventh Triennial Proceeding, Recommendation of the Acting Register of Copyrights at 42 (citations omitted) (October 2018) (“2018 Recommendation”).

## **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).

## **OTW’s Proposed Regulatory Language**

Since in the last proceeding the Copyright Office rejected OTW’s proposed regulatory language<sup>2</sup> for an overarching exemption for purposes of comment and criticism, the same

---

<sup>2</sup> *Compare* Organization for Transformative Works, Petition for Renewal, Item C ¶ 8 (July 22, 2020) (“OTW Renewal”) (“when circumvention is accomplished solely in order to accomplish the incorporation of short portions of motion pictures into new works for the purpose of criticism or comment”) *with* Section 1201 Rulemaking: Seventh Triennial Proceeding, Recommendation of the Acting Register of Copyrights at 34 (October 2018) (“2018 Recommendation”) (“where circumvention is undertaken solely in order to make use of short portions of the works for the purpose of criticism or comment”). In that proceeding, DVD CCA and AACCS LA objected to

language cannot be adopted as acceptable language to renew the current exemption, which permits circumvention “for the purpose of criticism or comment . . . for use in noncommercial videos . . . .” 37 C.F.R. § 201.40(b)(1)(i)(B). The Notice of Inquiry for this rulemaking provides, “Renewal may only be sought for current exemptions as they are currently formulated, without modification. This means that if a proponent seeks to engage in any activities not currently permitted by an existing exemption, a petition for a new exemption must be submitted.”<sup>3</sup> In rejecting the proposed language, the Copyright Office found that the language – eliminating references to users and types of uses – would permit some uses, which arguably could be for the purpose of criticism and comment but lacked the factual record to support a finding that “[such uses] were likely to be noninfringing.”<sup>4</sup> Thus, as the Copyright Office has already determined that the same language would permit some activities it did not intend to be included – and are not currently authorized - the proposed language cannot reasonably be considered a renewal. Instead, the language constitutes a modification, for which the proponents must submit a petition for a new exemption.

Date: September 8, 2020

Respectfully submitted,

/s/ Michael B. Ayers \_\_\_\_\_

Michael B. Ayers

Michael B. Ayers Technology Law

5256 S. Mission Rd., Suite 703-2215

Bonsall, CA 92003-3622

michael@ayerstechlaw.com

---

the proposal as it does now in the renewal period. Accordingly, DVD CCA and AACCS LA also incorporate by reference all of their arguments presented in that proceeding as to why this language would constitute an improper class.

<sup>3</sup> 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)

<sup>4</sup> 2018 Recommendation at 44.

/s/ David J. Taylor

David J. Taylor  
Right Size Law PLLC  
621 G ST SE  
Washington, DC 20003  
david.taylor@rightsize.com

*Counsel to DVD CCA and AACSLA*