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RE: Section 1201(a)(1) of the Digital Millennium Copyright Act
Exemption to Prohibition on Circumvention of Copyright
Protection Systems for Access Control Technologies

Mister Carson:

I am submitting these comments in response to the Notice of Inquiry announced in the Federal Register Volume 64, No. 102. My comments are, in part, a reply to the comments of Bernard Sporkin, representing TIME-WARNER, dated February 7, 2000, and available for download as file 043.pdf.

I am a patent attorney. I use LINUX on my computers as a hobby. I own a TOSHIBA SD-M1201 SCSI-2 internal DVD-ROM Drive for my computer, in addition to a SONY DVD Player and several DVDs. I am submitting these comments on my own behalf as a LINUX user. Although my comments deal with LINUX, they also apply to other open source software such as FreeBSD, NetBSD, OpenBSD, etc.

My primary concern is the way the Digital Video Disc ("DVD") Industry has used Section 1201 (a)(1) of the Digital Millennium Copyright Act ("DMCA") to discriminate against LINUX users such as myself. I am also concerned that the DVD Industry will continue this pattern of discrimination against LINUX users after Section 1201 (a)(1) of the DMCA goes into effect. Since the DVD Industry has discriminated, and continues to discriminate, against LINUX users such as myself, I feel that DVDs as a class of works should be exempt from the prohibition against circumvention of copyright protection systems for access control technologies.

The DVD Industry discriminates against LINUX users such as myself in 2 ways: first, by refusing to license the Content Scrambling Software ("CSS") so that LINUX vendors can offer an MPEG decoder board which would allow me to play DVDs on my computers running LINUX; and second, by suing the programmers who wrote and distributed DeCSS, a program which allows me and other LINUX users to play DVDs on their computers running LINUX.

The DVD Industry's refusal to license CSS

I own 2 desktop computers, both of which are running LINUX. Neither system can play DVDs. The reason I am unable to play DVDs on my computers running LINUX is that no vendor offers an MPEG decoder board which would allow me to play DVDs on my computers running LINUX. I have contacted 3 vendors of MPEG decoder boards:

1. Sigma Designs <http://www.sigmadesigns.com>
2. Stradis <http://www.stradis.com/decoder.html>
3. LinuxTv.org <http://linuxtv.org/dvd>

None of them offer an MPEG decoder board which would allow me to play DVDs on my computers running LINUX.

In contrast to LINUX users, persons with computers running Microsoft and APPLE software can purchase computers and/or MPEG decoder boards which allow them to watch DVDs on their computers. For example, Volume 221 of PC Connection Catalog, page 35, telephone number (800) 800-5555, URL <http://pcconnection.com>, offers an HP Pavilion 8600 Series computer which includes a DVD player. Sigma Designs offers MPEG decoder boards which play DVDs on computers running Microsoft or Apple software; these decoder boards can be purchased from MEGAHAUS, <http://www.megahaus.com>, for example. Apple users purchase the Power Mac G4, which includes a DVD player, from MICRO-CENTER, telephone number (713) 940-8535, for example.

The reason no vendors offer an MPEG decoder board which would allow me to play DVDs on my computers running LINUX is because the DVD Industry refuses to license CSS to the above, or any other, vendors to make such a decoder board. LinuxTv had a decoder board with LINUX drivers ready last summer. However, this decoder board is still not available because the DVD Industry refuses to license CSS to them.

Thus, the DVD Industry discriminates against me and all other LINUX users by refusing to license CSS to vendors so that they can make an MPEG decoder board which would allow me to watch DVDs on my computers running LINUX, but allowing Microsoft and Apple users to play DVDs on their computers.

The DVD Industry's lawsuit over DeCSS

The second way that the DVD Industry discriminates against me and other LINUX users is by preventing us from obtaining software that will allow me to watch DVDs on my computers running LINUX. Last Fall, the DVD Industry filed lawsuits in California, New York, and Connecticut against persons distributing a program called DeCSS on their websites. DeCSS is a program that performs the same function as CSS, thereby allowing me and other LINUX users to watch DVDs on our computers running LINUX. The programmers behind DeCSS wrote the program because the DVD Industry consistently refuses to license CSS so that LINUX users could watch DVDs on their computers running LINUX (see my discussion above). These programmers then posted DeCSS to the internet to allow all LINUX users the ability to watch DVDs on their computers running LINUX. The DVD Industry then promptly filed 3 lawsuits to block persons from distributing DeCSS and thereby continue to prevent me and other LINUX users from watching DVDs on their LINUX computers. These lawsuits are currently pending.

These lawsuits discriminate against me and other LINUX users because they render DVDs unavailable to me on my LINUX computers.

As I stated above, the DVD Industry refuses to license CSS to vendors so that they might make an MPEG decoder board which would allow me to play DVDs on my LINUX computers. Furthermore, their lawsuits over DeCSS prevent me from obtaining software which would allow me to play DVDs on my LINUX computer despite their refusal to license CSS. However, the DVD Industry does not prevent Microsoft or Apple users from playing DVDs on their computers. Since the DVD Industry allows Microsoft and Apple, but not LINUX, users to play DVDs on their computers, the DVD Industry is discriminating against me and other LINUX users. By filing the above-mentioned lawsuits against DeCSS, the DVD Industry further discriminates against me by preventing me from obtaining software which would allow me to play DVDs on my LINUX computers.

The DeCSS lawsuits are sham litigation because the DVD Industry allows Microsoft and Apple users to freely copy DVDs. The DVD Industry alleges that DeCSS promotes piracy of copyrighted works on DVD. However, the DVD Industry fails to mention that DVD-Recordable Drives are available to Microsoft and Apple users. For example, MEGAHAUS, <http://www.megahaus.com>, offers 7 DVD-Recordable Drives; 4 internal drives and 3 external drives. The DVD-Recordable Drive models are as follows:

Toshiba	SD-W1111	
Creative Labs	PC-DVD RAM 5.2 GB	
Panasonic	LFD103U	
Pioneer	DVRS201	
Toshiba	SD-W1111X	(external)
Panasonic	LFD103UX	(external)
Panasonic	DVDRAMMAC	(external for Apple MacIntosh)

These DVD-Recordable Drives are bundled with Microsoft and/or Apple software to record DVDs. As of last year, the total number of LINUX users was about 7 million, whereas the total number of Microsoft users was about 200 million. So the DVD Industry is suing distributors of DeCSS because they fear 7 million LINUX users will pirate their copyrighted works on DVD, but they are completely unconcerned that 200 million Microsoft and/or Apple users will purchase DVD-Recordable Drives and pirate copyrighted works on DVD. Since the DVD Industry is completely unconcerned that 200 million Microsoft and Apple users will purchase DVD-Recordable Drives and pirate copyrighted works on DVD, I feel the DVD Industry's lawsuits to block distribution of DeCSS are sham litigation designed to discriminate against me and other LINUX users.

Another reason that I feel the DVD Industry's lawsuit over DeCSS is sham litigation is because the DVD Industry has the means to stop DeCSS and chooses not to use it. As I stated above, the programmers behind DeCSS wrote it so they could play DVDs on their LINUX computers. They were frustrated with the DVD Industry's stonewalling tactics in refusing to license CSS to vendors so that vendors could make an MPEG decoder board which would allow them to play DVDs on their computers when running LINUX. So if the DVD Industry really wanted to stop DeCSS, then they would license CSS to vendors so that

these vendors could make an MPEG decoder board which would allow LINUX users to play DVDs on their computers when running LINUX. The fact that the DVD Industry chooses to refuse to license CSS to vendors so that these vendors could make an MPEG decoder board which would allow them to play DVDs on their computers when running LINUX indicates to me that their lawsuit over DeCSS is sham litigation.

Thus, the DVD Industry is discriminating against me and other LINUX users by suing to block the distribution of DeCSS and thereby preventing me and other LINUX users from obtaining software that would allow us to play DVDs on our LINUX computers.

By preventing me and other LINUX users from watching DVDs on our computers running LINUX, but allowing Microsoft and Apple users to watch DVDs on their computers, the DVD Industry is discriminating against me and other LINUX users.

The Adverse Affects of the DVD Industry's discrimination against LINUX users

The DVD Industry's discrimination against me and other LINUX users adversely affects us in 2 areas: movies/entertainment and software.

Movies/Entertainment

As I stated above, the DVD Industry's discrimination against me and other LINUX users prevents us from watching movies on DVD on our computers running LINUX. Thus, the adverse affect of the DVD Industry's discrimination against me and other LINUX users is that copyrighted works on DVD (I.e., movies) are completely unavailable to us.

Software

DVDs are a superior media when compared to Compact Discs ("CDs"). CDs contain about 650 megabytes ("MB") of data. DVDs contain 2,600 MB, or 2.6 gigabytes ("GB") , of data for a single sided DVD and 5.2 GB of data for a double sided DVD. Since DVDs can store more data than CDs, they can contain more documentation, plug-in software, and helper applications than CDs. Since DVDs can contain more documentation, plug-in software, and helper applications than CDs, they are a superior media to CDs.

The DVD Industry discriminates against me and other LINUX users by allowing Microsoft and Apple, but not LINUX, users to install documentation and/or software on their computers. As I stated above, persons running Microsoft and Apple software can play DVDs on their computers. Since they can play DVDs on their computers, they can install software contained on DVDs. Last month Microsoft announced that the documentation for their Visual C++ compiler would only be available on DVD. Since Microsoft is making documentation available on DVD and Microsoft users can play DVDs on their computers, Microsoft users can install documentation, or software, contained on DVDs. Thus, Microsoft and Apple users already can install documentation and/or software

contained on DVDs on their computers. Since Microsoft and Apple, but not LINUX, users already can install documentation and/or software contained on DVDs on their computers, the DVD Industry is discriminating against me and other LINUX users.

An adverse affect of the DVD Industry's discrimination against me and other LINUX users is that it prevents us from installing LINUX distributions with just 1 disc. LINUX software is currently available on CDs. Current LINUX distributions, like Red Hat Software's, SuSE's, or Mandrake's, include at least 3 CDs (about 1.750 GB). Their deluxe edition LINUX distributions contain at least 5 CDs (about 3.250 GB). Having to insert different CDs into a computer while installing LINUX on that computer is cumbersome and sometimes leads to mistakes which require re-installing LINUX from scratch. Having a single DVD to install LINUX on a computer prevents these mistakes. As I stated above, I and other LINUX users cannot play DVDs on our computers while running or installing LINUX. Since we cannot use DVDs to install LINUX software, we are stuck with the cumbersome and mistake-prone method of installing LINUX distributions using multiple CDs. Thus, the adverse affect of the DVD Industry's discrimination against me and other LINUX users is that we are relegated to using the inferior CD media to install LINUX software and documentation.

Region Codes

Finally, I feel that Region Codes contained on DVDs conflict with the philosophy behind the Copyright Act and should be exempt as a class of works from the prohibition on circumvention of copyright protection systems for access control technologies. The Constitutional basis for the Copyright Act is contained in Article I, Section 8, Clause 8 of the United States Constitution, which states that Congress shall have the power

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

The philosophy behind Article I, Section 8, Clause 8 is that encouraging Authors to disclose their writings will enrich the public and contribute to the marketplace of ideas. By rewarding Authors for disclosing their writings, Authors would be encouraged to disclose their writings. By disclosing their writings, Authors would enrich the public and contribute to the marketplace of ideas.

Region Codes defeat this philosophy. Region Codes prevent DVDs from being played in different regions. By preventing DVDs from being played in different regions, the Region Codes prevent the works of Authors on DVDs from being disclosed to the public across different regions. Since the Region Codes prevent the works of Authors on DVDs from being disclosed to the public across different regions, the Region Codes prevent these works from enriching the public and contributing to the marketplace of ideas. Since Region Codes prevent these works from enriching the

public and contributing to the marketplace of ideas, they defeat the philosophy behind Article I, Section 8, Clause 8, of the United States Constitution and the Copyright Act.

Although regions are presently defined as multi-country areas, the DVD industry may change their definition of a region in the future. The DVD Industry alleges that they need Region Codes to prevent piracy. However, this justification can be applied to single nations or even individual states within nations just as easily as to multi-country areas. Since the DVD Industry's justification for Region Codes applies just as easily to single nations or individual states within nations, the DVD Industry may decide to redefine region codes as single countries or individual states. If the DVD Industry defined regions as individual states within nations, then they would prevent citizens of 1 state from viewing DVDs sold in another state. By preventing citizens of 1 state from viewing DVDs sold in another state, the DVD Industry would be hindering the works contained on these DVDs from enriching the public and contributing to the marketplace of ideas. Since Region Codes defined as individual states within nations would hinder these works from enriching the public and contributing to the marketplace of ideas, these redefined Region Codes would defeat the philosophy behind Article I, Section 8, Clause 8, of the United States Constitution and the Copyright Act.

Furthermore, the DVD Industry has a profit motive for redefining regions as individual states within nations. By requiring lawful users to purchase a DVD player to play a DVD from a particular region, the DVD Industry increases their profits. If the region is defined as a single country like the United States, then the DVD Industry can only sell 1 DVD player in the United States for viewing all DVDs in the United States. However, if the region is defined as individual states within the United States, then the DVD Industry can sell up to 50 different DVD players, for each state of the union. Selling 50 DVD players is more profitable than selling 1 DVD player. Since selling 50 DVD players is more profitable than selling 1 DVD player, the DVD Industry has a profit motive to redefine regions as individual states within a nation. Since the DVD Industry has a profit motive for redefining regions as individual states within nations, they are likely to redefine regions as individual states to increase their profits.

Since the DVD Industry's justification for using Region Codes applies to individual states within nations just as easily as to multi-country areas and the DVD Industry has a profit motive for redefining regions as individual states, I feel that in the next 3 years the DVD Industry will try to redefine their Region Codes as individual states within nations. By redefining regions as individual states within nations, the DVD Industry will be defeating the philosophy behind Article I, Section 8, Clause 8, of the United States Constitution and the Copyright Act.

Since Region Codes defeat the philosophy behind Article I, Section 8, Clause 8, of the United States Constitution and the Copyright Act, I feel that any copyrighted works which employ

Region Codes to control access to these works should be exempt as a class of works from the prohibition on circumvention of copyright protection systems for access control technologies.

A. Technological Measures

1. What technological measures that effectively control access to copyrighted works exist today?

Content Scrambling Software ("CSS"), which is applied to DVDs to prevent lawful owners of DVDs from viewing DVDs on hardware of which the copyright owner does not approve. Specifically, the DVD Industry applies CSS to DVDs to prevent LINUX users such as myself from watching DVDs on computers running LINUX.

2. Do different technological measures have different effects on the ability of users to make non-infringing uses?

Yes.

CSS currently renders copyrighted works on DVD unavailable to me and other LINUX users. Region Codes used on copyrighted works on DVDs render DVDs unavailable to lawful users across different regions.

Can and should the Librarian take account of those different effects in determining whether to exempt any classes of works from the anti-circumvention provisions of section 1201?

Yes

If so, how?

By exempting DVDs as a class of works from Copyright protection under Section 1201 (a)(1). Also, by exempting copyrighted works employing CSS or Region Codes to control access to the copyrighted work as a class of works from Copyright protection under Section 1201 (a)(1).

In determining what constitutes a class of works?

Yes. The Librarian should exempt DVDs, copyrighted works employing CSS or Region Codes to control access to the work, and any class of works which employs access control technologies that discriminate against LINUX users and/or open source software users in general.

B. Availability of Works

3. How has the use of technological measures that effectively control access to copyrighted works affected the availability of such works to persons who are or desire to be lawful users of such works?

CSS has made DVDs as a class of works unavailable to LINUX

users such as myself, and to open source software users in general, because the DVD Industry refuses to license CSS to LINUX vendors. By refusing to license CSS to LINUX vendors, these LINUX vendors cannot offer a LINUX MPEG decoder board that would allow me to play DVDs on my LINUX computer to LINUX users such as myself. Since LINUX vendors cannot offer a LINUX MPEG decoder board to LINUX users such as myself, I cannot watch or use DVDs on my computer while running LINUX. Since I cannot watch or use DVDs on my computer while running LINUX, the DVD Industry has rendered these DVDs unavailable to me and other LINUX users.

4. Are there specific works or classes of works which, because of the implementation of such technological measures, have become unavailable to persons who desire to be lawful users of such works?

Yes.

If so, identify those works or classes of works and explain how they have become unavailable.

See my answer to question 3 above.

5. Are there specific works or classes of works which, because of the implementation of such technological measures, have become less available to persons who desire to be lawful users of such works?

Yes.

If so, identify those works or classes of works, explain the ways in which they have become less available, and explain whether those works or classes of works are also available in other formats to which such technological measures have not been applied.

See my answer to question 3 above.

Movies are available in VHS and LaserDisc formats. Software is available on CD-ROMs. However, these formats do not offer the same quality as DVD.

6. If there are works that are available both in formats to which technological measures have been applied and in formats to which technological measures have not been applied, to what extent can the works in the latter formats substitute for the works in the formats to which technological measures have been applied?

With respect to movies, the above alternative formats do not compare to DVDs in quality. VHS and LaserDisc do not offer nearly as good video or audio quality as do DVDs. Furthermore, they do not contain as much information, which requires more VHS tapes or LaserDiscs to hold the same amount of information as 1 DVD. In addition, VHS tapes and LaserDiscs do not offer the extra features that DVDs offer, like additional languages, cut scenes, alternative endings, and interviews with the actors or

directors.

With respect to software, CD-ROMs do not adequately substitute for DVDs. Current LINUX distributions, like RED HAT SOFTWARE'S or SUSE'S, include at least 3 CD-ROMs and their deluxe edition distributions contain 5 or more CDs. Having to insert these CDs while installing LINUX on a computer is cumbersome and sometimes leads to mistakes, which requires re-installing LINUX from scratch. Using a single DVD is much more convenient and gives rise to fewer mistakes while installing LINUX.

7. Are there works or classes of works that are available only electronically and only in formats to which such technological measures have been applied?

Yes.

If so, what are they?

DVDs.

- c. Availability of Works for Nonprofit Archival, Preservation, and Educational Purposes

8. Has the use of technological measures that effectively control access to copyrighted works affected the availability of such works for nonprofit archival purposes?

Yes.

If so, how?

CSS, combined with the DVD Industry's region codes, hinders government agencies, schools, libraries, and non-profit institutions from buying DVDs across different regions, thereby making them practically unavailable.

Government agencies, schools, libraries, and non-profit institutions are chronically short of funds. Since they are chronically short of funds, they tend to use open source software such as LINUX. As I stated above, LINUX users, and open source software users in general, cannot play DVDs on computers running LINUX. Since government agencies, schools, libraries, and non-profit institutions cannot play DVDs on computers running LINUX, they must either buy a DVD player or proprietary software like Microsoft Windows or Apple OS. Both DVD players and proprietary software is expensive. Since government agencies, schools, libraries, and non-profit institutions are chronically short of funds, having to purchase a DVD player or proprietary software depletes their already limited budgets. Since many government agencies, schools, libraries, and non-profit institutions cannot afford the additional purchase of a DVD player or proprietary software, they may choose to forego purchasing DVDs for archival purposes. Since many government agencies, schools, libraries, and non-profit institutions may choose to forego purchasing DVDs for archival purposes due to the additional expense of purchasing a DVD player or

proprietary software, DVDs are practically speaking unavailable to these government agencies, schools, libraries, and non-profit institutions for archival purposes.

In addition, Region Codes create an additional expense for these government agencies, schools, libraries, and non-profit institutions. Since DVDs can only be played with a DVD player from the same region, government agencies, schools, libraries, and non-profit institutions purchasing a DVD from a different region must also purchase a DVD player from that region. Since they must purchase a DVD player for each DVD from a region different from their own, these government agencies, schools, libraries, and non-profit institutions may choose to forego purchasing DVDs outside of their region for archival purposes. Since these government agencies, schools, libraries, and non-profit institutions may choose to forego purchasing DVDs outside of their region due to the additional expense of having to also purchase a DVD player from that different region, Region Codes render DVDs from different regions practically speaking unavailable for these government agencies, schools, libraries, and non-profit institutions

Are there specific works or classes of works that have been affected in this respect?

Yes.

If so, identify them, explain how they have been affected, and explain whether those works or classes of works are also available in other formats to which such technological measures have not been applied.

DVDs.

For how they have been affected, please see my answer to question 3.

For availability in other formats, please see my answers to questions 5 and 6.

9. Has the use of technological measures that effectively control access to copyrighted works created problems with respect to the preservation of such works?

Yes.

If so, how?

CSS prevents LINUX users such as myself from making backup copies of works on DVD. Since I cannot make backup copies of works on DVD, I cannot preserve works on DVD using LINUX software. Thus, CSS has created problems for me and other LINUX users with respect to preserving copyrighted works on DVD by preventing us from making backup copies of these works on DVD.

Are there specific works or classes of works that have been affected in this respect?

Yes.

If so, identify them and explain how they have been affected.

DVDs.

See my answer above.

10. Has the use of technological measures that effectively control access to copyrighted works affected the availability of such works for nonprofit educational purposes?

Yes.

If so, how?

See my answers to questions 8 and 9.

Are there specific works or classes of works that have been affected in this respect?

Yes.

If so, identify them, explain how they have been affected, and explain whether those works or classes of works are also available in other formats to which such technological measures have not been applied.

DVDs.

For how they have been affected, see my answers to questions 8 and 9.

For other formats, see my answers to questions 5 and 6.

11. For purposes of this rule-making, in classifying works that are to be exempted from the prohibition against circumvention of technological measures that control access, should any classes of works be defined, in part, based on whether the works are being used for nonprofit archival, preservation, and/or educational purposes?

DVDs should, but only if they are not exempted in their entirety as a class of works.

Explain why or why not.

Since nonprofit archival, preservation and/or educational uses of copyrighted works are traditionally considered fair uses of these works, they should continue to remain fair uses.

- D. Impact on Criticism, Comment, News Reporting, Teaching, Scholarship, or Research

12. What impact has the use of technological measures that effectively control access to copyrighted works had on the ability of interested persons to engage in criticism, comment, news reporting, teaching, scholarship, or research?

See my answers to questions 8 and 9.

13. What impact has the use of technological measures that effectively control access to copyrighted works had on the ability of interested persons to engage in non-infringing uses of such works, including fair use and activities permitted by exemptions prescribed by law?

See my answers to questions 8 and 9.

14. Are there specific works or classes of works with respect to which the ability of interested persons to engage in criticism, comment, news reporting, teaching, scholarship, or research has been hindered because of such technological measures?

Yes.

If so, identify them, explain how such activities have been hindered, and explain whether those works or classes of works are also available in other formats to which such technological measures have not been applied.

DVDs.

For other formats, please see my answer to questions 5 and

6.

For how these activities are hindered, please see my answers to questions 8 and 9.

15. Are there specific works or classes of works with respect to which the ability of interested persons to engage in non-infringing uses has been hindered because of such technological measures?

Yes.

If so, identify them, explain how such activities have been hindered, and explain whether those works or classes of works are also available in other formats to which such technological measures have not been applied.

DVDs.

See my answer to question 14.

16. For purposes of this rule-making, in classifying works that are to be exempted from the prohibition against circumvention of technological measures that control access, should any classes of works be defined, in part, based on whether the works are being used for purposes of criticism, comment, news reporting, teaching, scholarship, or research?

DVDs should, but only if they are not exempted in their entirety as a class of works.

Explain why or why not.

See my answer to question 11.

17. For purposes of this rule-making, in classifying works that are to be exempted from the prohibition against circumvention of technological measures that control access, should any classes of works be defined, in part, based on whether the works are being used in ways that do not constitute copyright infringement, e.g., as fair use or in a manner permitted by exemptions prescribed by law?

DVDs should, but only if they are not exempted in their entirety as a class of works.

Explain why or why not.

See my answer to question 11.

- E. Effect of Circumvention on the Market for or Value of Copyrighted Works

18. In what ways can technological measures that effectively control access to copyrighted works be circumvented?

By writing software that circumvents the encryption. For example, a group of programmers wrote the program DeCSS to circumvent CSS, which the DVD Industry refuses to license to LINUX vendors.

How widespread is such circumvention?

Not widespread at all, particularly after the DVD Industry sued persons posting the DeCSS software to the internet.

19. Has such circumvention (or the likelihood of circumvention) had any impact on the price of copyrighted works?

No.

Please explain.

Prices for DVDs have remained the same since DeCSS was publicly distributed. Since the prices for DVDs have not changed since DeCSS was publicly distributed, DeCSS did not have any impact on the price of copyrighted works offered on DVD.

20. Has such circumvention (or the likelihood of such circumvention) had any impact on the availability of copyrighted works?

Yes.

In particular formats or in all formats?

In particular formats.

Please explain.

DeCSS has increased the availability of copyrighted works on DVD. DeCSS allows LINUX users such as myself to view DVDs on our computers while running LINUX. Since LINUX users such as myself could not view DVDs on our computers while running LINUX prior to the release of DeCSS, DeCSS has increased the availability of copyrighted works on DVD for LINUX users.

21. Has such circumvention had any other impact on the marketing of copyrighted works?

None of which I am aware.

If so, please explain the impact and which works or classes of works have been affected.

See my answer above.

22. Do the answers to any of these questions relating to the effect of circumvention on the market for or value of copyrighted works depend upon the class of work?

Yes.

Please explain.

Copyrighted works on DVD represent a unique class of works.

F. Other Factors and Questions

23. For purposes of this rule-making, what criteria should be used in determining what is a "class" of copyrighted works?

Type of media containing the copyrighted work (i.e., DVDs, MP3s, etc.)

Type of encryption used to control access to the work

Whether the technological measures use Region Codes

24. With respect to any adverse effect on use of access to copyrighted works that has been identified in response to any of the preceding questions, is there an explanation for the adverse effect other than the presence of technological measures that effectively control access to copyrighted works?

No. The adverse affect on LINUX users such as myself is due solely to the presence of CSS.

25. Has the use of technological measures that effectively control access to copyrighted works resulted in making copyrighted works more widely available?

Yes, but not as widely available as they could be. In other words, DVDs would be more widely available without CSS and region codes.

Please explain.

Without CSS and Region Codes, DVDs would be available to LINUX users such as myself and to other open source software users. Furthermore, DVDs would be more widely available via government agencies, schools, libraries, and nonprofit institutions if the DVD Industry did not employ CSS and Region Codes to restrict access to the copyrighted works contained on this media.

26. Has the use of technological measures that effectively control access to copyrighted works resulted in facilitating lawful uses of copyrighted works?

Not for LINUX users such as myself, nor for open source software users in general.

27. Are there other factors that should be taken into account?

Yes.

If so, please identify and address those factors.

The profit motive of the DVD Industry

The companies that comprise the DVD Industry act so as to maximize their profits. Since restricting access to copyrighted works on DVD generates more profit for them, these companies will continue to restrict access to copyrighted works on DVD so as to maximize their profits.

The purpose of the Copyright Act is to promote the free flow of ideas and information by rewarding artists, composers, and writers for disclosing their works. Since restricting access to copyrighted works prevents the free flow of ideas and information, restricting access to copyrighted works defeats the purpose of the Copyright Act. Since restricting access to copyrighted works defeats the purpose of the Copyright Act, classes of works such as DVDs should not receive copyright protection under Chapter 12 of the Copyright Act and should be ruled exempt from the prohibition against circumvention of copyright protection systems for access control technologies.

UCITA (with respect to software available on DVDs)

UCITA is prospective legislation before the various state legislatures throughout this country. UCITA is an addition to Article 2 of the Uniform Commercial Code which grants software publishers vast and sweeping rights to the detriment of the public. Since software will in the next 3 years be released on DVD, UCITA combined with Chapter 12 of the Copyright Act will adversely affect LINUX users such as myself, and open source software users in general. As I stated above, the DVD Industry has discriminated, and continues to discriminate, against LINUX users such as myself. Given the DVD Industry's consistent discrimination against LINUX users such as myself, and the adverse affects of UCITA combined with Chapter 12 of the

Copyright Act, I feel that DVDs should be ruled exempt from the prohibition against circumvention of copyright protection systems for access control technologies.

Monopolistic practices of Proprietary Software companies

Microsoft is currently on trial for their monopolistic practices in the PC software industry. Microsoft has stated publicly that they consider LINUX a threat to them. Furthermore, Microsoft has a market capitalization of around \$400 billion. Also, as I stated above, the DVD Industry is motivated by profit. Since the DVD Industry is motivated by profit, Microsoft can use its vast wealth and monopoly market power to pay the DVD Industry to continue to make DVDs unavailable to LINUX users such as myself, and open source software users in general. As the Judge Jackson's Findings of Fact in the Microsoft Antitrust trial make abundantly clear, Microsoft has engaged in such behavior many times in the past. Since Microsoft can use its vast wealth and monopoly market power to pay the DVD Industry to continue making DVDs unavailable to LINUX users such as myself and has engaged in such behavior before, I feel that Microsoft will pay the DVD Industry to continue making DVDs unavailable to LINUX users such as myself. Since I feel that Microsoft will pay the DVD Industry to continue making DVDs unavailable to LINUX users such as myself and the DVD Industry has a profit motive for accepting Microsoft's payment, I feel that DVDs as a class of works should be ruled exempt from the prohibition against circumvention of copyright protection systems for access control technologies.

28. What other comments, if any, do you have?

The entire DVD format should be exempted as a class of works until the DVD Industry makes the DVD format, for both movies and software, available to LINUX users such as myself and open source software users in general. Furthermore, any copyright protection for the DVD format under Section 1201 or any other section of the Copyright Act should be expressly conditioned on the DVD Industry providing equal access to the DVD format for LINUX and other open source software users as for Microsoft and Apple software users.

29. Do you wish to testify at a hearing to be conducted by the Copyright Office in connection with this rule-making?

If the Librarian feels that my testimony is useful, then yes I wish to testify.

Sincerely yours

Daniel E. Maddux
Reg. No. 37,174