

Mr. David O. Carson  
General Counsel  
U.S. Copyright Office  
P.O. Box 70400  
Washington, DC 20024

RE: Docket No. RM 2011-7  
Exemption to Prohibition on Circumvention  
of Copyright Protection Systems for Access  
Control Technologies  
Proposed Classes 7 and 8

Dear Mr. Carson:

On behalf of AACCS LA, please find below its responses to the questions posed in your letter dated July 3, 2012.

1.

*(For all witnesses who testified relating to proposed Classes 7 and 8):* The screen capture products “Replay Video Capture” offered by Applian, as well as “Jing,” “Camtasia,” and “Snagit” offered by Techsmith, have been referred to in the record as potentially viable alternatives to circumvention which diminish or remove the need for several of the requested exemptions. Please state and explain your position as to whether and why (or why not) one who uses the current version of any of the above named screen capture products in order to copy all or part of a copyrighted motion picture “circumvent[s] a technological measure that effectively controls access to a work protected by this title” in violation of 17 U.S.C. § 1201(a)(1)(A).

## RESPONSE

As stated at the June 4 hearing, we concluded that the Replay Video Capture Software does not violate the DMCA because our testing revealed that the software does not decrypt or descramble the content but instead captures the images and audio only after the content has been decrypted, and because the maker of the software, on its website and otherwise to our knowledge, does not advertise or describe the product as being capable of, or designed for the purpose of, circumventing a technological measure. The research lab we used to examine the Replay software represented to us they extensively use Camtasia (the mac-compatible video capture software), and, based on their use and independent testing, they conclude that Camtasia similarly captures the images and audio only after the content has been decrypted. We have not reviewed the other named products. We note that our written comments emphasized that our

support for the use of video capture software as an alternative to circumvention is “limited to the context of this proceeding, where the use of any specific alternative is assumed to be for noninfringing purposes only.” (AACS LA’s Comments at 10.)

2.

- (A) Are documentary filmmakers generally required to obtain errors and omissions insurance for their films prior to distributing and/or publicly performing them?
- (B) Are documentary filmmakers generally required to obtain errors and omissions insurance for their films prior to exhibiting them at a film festival?
- (C) What would be the effect and advisability of requiring, as a precondition for benefitting from an exemption for documentary filmmakers, that the documentary filmmaker must have a good faith intention to obtain errors and omissions insurance prior to distribution and/or public performance of any film and that, prior to any distribution to the public or any public performance of a film, the documentary filmmaker must have obtained errors and omissions insurance?

#### RESPONSE

For the reasons stated in our prior comments and at the hearings in this proceeding, AACS LA opposes the grant of an exemption to permit circumvention of AACS technology for documentary filmmakers in order to enable the making of copies of segments for inclusion in documentary movies. Among the reasons we gave for opposing this exemption request is that DVD quality clips will be available and meet the legitimate, fair use needs of documentary filmmakers. The possible requirement suggested above is not sufficient to mitigate the harm that granting the exemption as to AACS would cause.

3.

*(For witnesses opposing proposed Class 7):* Proponents have argued that the use of screen capture software to capture segments of the 2009 Star Trek motion picture was insufficient because of pixelization, dropped frames and poor quality of zoomed in and cropped images, and offered examples of such shortcoming.<sup>1</sup>

The Office requests that opponents of proposed Class 7 inform the Office whether they are able to use screen capture software<sup>2</sup> and any editing software to capture the same images from the 2009 Star Trek movie with results that are of sufficient quality for the requested uses. If you are able to do so, please describe the hardware and software products used and the specific steps taken to obtain the results, and submit a copy of the resulting images. Please also either provide copies to the other witnesses addressed in this

letter or provide the Copyright Office with permission to provide copies to the other witnesses.

RESPONSE

This specific example was offered in relation to Class 7B and 7C, which include requests only to be permitted to circumvent technological protection measures for online distributed content or CSS on DVDs, and do not include a request to be permitted to circumvent AACS. We understand that DVD CCA will respond as to the specific segment noted above, and AACS LA supports DVD CCA's response. With regard to the quality of video capture software for other uses that were the subject of requests in Class 7 and that do include requests to permit circumvention of AACS, AACS LA believes that the demonstrations of video capture software in the technology demonstration and at the hearing showed that such software produces clips that are of good and sufficient quality for those uses.

Respectfully submitted,

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