

**LIBRARY OF CONGRESS
COPYRIGHT OFFICE**

In the Matter of

Exemptions to Permit
Circumvention of Access Controls
on Copyrighted Works

Docket No. 2023–0005

**COMMENTS OF THE DVD COPY CONTROL ASSOCIATION (“DVD CCA”) AND
THE ADVANCED ACCESS CONTENT SYSTEM LICENSING ADMINISTRATOR,
LLC (“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 object to the proposal found in the renewal petition submitted by the Organization for Transformative Work (“OTW”). OTW again advances in this streamlined renewal proceeding a proposal to “renew” the same exemption with modified language that was rejected in the prior proceeding as appropriately addressed in the full rulemaking process.

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 distributed on DVD discs against unauthorized access. 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.

AACCS 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. AACCS

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”). AACCS 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. AACCS LA has participated in this rulemaking since the Fourth Triennial Proceeding (2008 – 2009 cycle).

OTW’s Renewal Petition

The Notice of Inquiry for this proceeding clearly stated the conditions required for renewal of an existing exemption: “The Office will **only** permit renewal of current exemptions **as they are currently written** in the Code of Federal Regulations, **without modification.**” 88 Fed. Reg. 37486, 37487 (June 8, 2023) (emphasis added). The very petition used by OTW to submit its renewal request reiterates this instruction. Undeterred, OTW requests to “renew” this exemption with modified language, which is invalid in the streamlined renewal process, and such modified language should be rejected in the consideration of this exemption for renewal. The nature of the modification, including its assertion that the proposed change is non-substantive and does not substantively expand the scope of the exemption, is simply not relevant. OTW may make its case for modifying the exemption in the next phase of this proceeding.

Indeed, OTW is undoubtedly aware that its proposal is inappropriate for the streamlined renewal process because the Copyright Office rejected the exact same proposal in the last proceeding, agreeing with DVD CCA and AACCS LA that “OTW’s proposed modifications are appropriately addressed as part of the full rulemaking proceeding.” 85 Fed. Reg. 65293, 65298 (Oct. 15, 2020).

In its current renewal petition, OTW has done nothing more than dust off its prior filing – as confirmed by a side-by-side comparison of its renewal petitions in the prior Eighth Triennial Proceeding and the current Ninth Triennial Proceeding.

OTW’s Noncommercial Video Renewal Petition in the Eighth Triennial Rulemaking (July 22, 2020)	OTW’s Noncommercial Video Renewal Petition in the Ninth Triennial Rulemaking (July 6, 2023)
<p>Specifically, the exemption should be renewed</p> <p>using the relatively simple language defining the exempted class from the 2008 rulemaking, covering both DVDs and Blu-Ray (and streaming where necessary) “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, and where the person engaging in circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of the use.”</p> <p>To be clear, we are not requesting an expansion of the existing exemption, but a more understandable restatement. The Office’s own shorthand for the exemption, “Excerpts for use in noncommercial videos,” makes clear what participants in this process already understand: this is an exemption for fair use of audiovisual works in noncommercial video.</p>	<p>The exemption could be made more understandable by</p> <p>using the relatively simple language defining the exempted class from the 2008 rulemaking, covering both DVDs and Blu-Ray (and streaming where necessary) “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, and where the person engaging in circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of the use.”</p> <p>To be clear, we are not requesting an expansion of the existing exemption, but a more understandable restatement. The Office’s own shorthand for the exemption, “Excerpts for use in noncommercial videos,” makes clear what participants in this process already understand: this is an exemption for fair use of audiovisual works in noncommercial video</p>

Despite making the identical, and previously rejected, argument that its modification is nothing more than a restatement (an assertion with which DVD CCA and AACSLA vehemently disagree), OTW has offered no additional reasoning or argument explaining how its modification by alleged restatement is now somehow appropriate in this streamlined renewal process. In the absence of any such explanation, OTW has offered no basis for the Copyright Office to disturb its

prior conclusion, and the Copyright Office should once again reject the proposal found in OTW's renewal petition and address the proposed modification within the full rulemaking.

Date: August 11, 2023

Respectfully submitted,

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