

## **Executive Summary**

We request that a DMCA exemption be granted for the following classes of works:

- 1) Obsolete software/hardware combinations protected by a software based copy protection mechanism (software dongle) when the manufacturer is unable (because of no longer being in business) or unwilling to provide access via this system to those who are otherwise entitled access.
- 2) Obsolete software/hardware combinations protected by a software based copy protection mechanism (software dongle) that prevents the hardware and software from running on current operating systems or current hardware by those otherwise entitled to access to the software and hardware.

Currently, some musicians and sound engineers are being harmed by a software dongle attached to an obsolete software/hardware combination called Ensoniq PARIS. Users of this system are harmed in the following ways:

As of January 1<sup>st</sup>, 2015, response codes will no longer be provided for the most recent version of the software (version 3.0), meaning that musicians and sound engineers who have paid for a licence to use the application will no longer be able to install the software on new systems. This could be required because of the failure of the existing PC host. Further, any change to the hardware in their existing PC host systems may lock the application and make it impossible for them to do their work. This could happen at any time, even in the middle of a project, causing a missed deadline, the inability to complete a project, or the inability to access past projects which are their own intellectual property. This risk will render this system useless in a professional environment. This will force professional PARIS users into expensive upgrades that wouldn't otherwise be needed.

Many musicians and sound engineers believe that the Ensoniq PARIS platform sounds better than competing offerings, giving them a competitive advantage in the marketplace.

The software dongle is also incompatible with 64 bit versions of Windows, even though the underlying protected software is compatible. PARIS users are being prevented from using the most powerful, modern PCs because of a protection measure that no longer makes sense. Since the software is obsolete and not for sale, there is no business case to continuing to protect the software, but the harm to the end users is real.

## **Background**

The PARIS workstation was a Digital Audio Workstation that was sold by Ensoniq, and later Emu-Ensoniq (Emu was purchased by Creative Labs in 1998 and merged with Emu), during the late 1990s. It was fairly widely used in the professional audio industry, even contributing to a Grammy-winning release by Sting. There are a number of facilities that continue to use the system.

PARIS was essentially a closed hardware/software system whose software was provided by Intelligent Devices. A demo version of PARIS released before 2000 opened perfectly with all audio files in place, but did not play back any audio. It has always been clear that the app can open without attached hardware, but the hardware provides much of audio functionality. Released versions of the software did not open unless the hardware had been checked and verified present; whether by design or not, this means the obsolete hardware now effectively functions as a "dongle" to the PARIS software. The last update of the PARIS software was in 2001, at version 3.0, and protected with the PACE copy protection system. Being a major version release, it contained a number of bugs ranging from the minor (problems with reading its own exported OMF files) to the near-crippling (advertisements listing PARIS' abilities to handle such standards as OMF, MIDI or VST effects drove sales for the software, but those features suffered from issues ranging from minor malfunction (Ensoniq's VST effect implementation will not work properly or at all with many VST plug-ins) to virtual non-functionality (MIDI playback would stop and could not be restarted; the SMPTE card would not chase time code properly). Intelligent Devices has been petitioned repeatedly to release a .01 update to address these issues. Initially, the told PARIS users that an update, would come "soon," but no update was released. These problems contributes to the obsolesces of the platform.

### **Obsolescence:**

1) The PARIS system has not been in production since 2001. Further, the PARIS 3.0 software has not been available for sale for many years. Intelligent Devices has now stated that they will no longer release PACE challenge codes for the PARIS software as of January 2015. Each installation produces what is known as a system dependent "challenge" code that must be answered with an Intelligent Devices produced "response" code. As PARIS software is dependent on an authorization code provided by Intelligent Devices to boot, and the hardware is dependent on the software to operate, this means both the hardware and the PARIS application are now unavailable to existing PARIS users should the software need to be re-installed on a new PC for any reason. Also, any change in the system that the PACE software considers major could also cause the PACE system to require a new response code, rendering the system useless even if the software was not reinstalled or changed by the end user.

2) The PARIS system has been publicly and prominently declared obsolete at the two homes of the PARIS community on the internet, the Paris Wiki and The Paris Forums, since 2010. This declaration forms part of the Wiki's introductory paragraph and has remained unchallenged for four years, despite the PARIS forums being linked to by Intelligent Devices from their website.

Further, PARIS is listed on the Intelligent Devices website under a section entitled "Legacy Products," and subtitled, "LEGACY PRODUCTS are the award-winning products that Intelligent Devices released in the 1990's." PARIS isn't mentioned on the Emu website at all.

3) The system's closed project file format, requiring a combination of hardware and software, and requiring a fourteen-year-old computer to run on unmodified, presents a crippling block to the abilities of artists, composers and engineers to access their own intellectual property, namely

their works created and recorded using PARIS. Should their systems fail, it will be extremely difficult to extract their projects. Even if they purchased a used computer that could run PARIS, they would need a PACE response which Intelligent devices will no longer produce.

4) The system's PACE copy protection system has long been accused of being a major source of system destabilization. Anecdotal reports from early in the DAW's history suggest strongly that the removal of the now-long-obsolete PACE copy protection removes many potentially crippling BSOD ("blue screen of death", or total system failure) issues. This is now moot as under the current 64 bit Windows OS, the PACE copy protection no longer functions. This prevents authorized PARIS systems from running at all. The system cannot generate Challenge codes even if Intelligent Devices would provide a response code.

5) PARIS software and hardware systems require installation on a host computer. The last operating systems PARIS was qualified to run on were Windows 98 (obsolete in 2003) and Mac OS9 (obsolete in 2003). Unmodified PARIS systems cannot be used on modern PCs. Within the PARIS community a number of coders have taken on the responsibility of developing drivers first for Win XP, then on modern multicore systems, then on Windows Vista, Windows 7, 8 and 9, all while carefully and diligently respecting the PACE copy protection and without "reverse engineering" the PARIS application or its associated proprietary file formats. Without this vastly time-consuming intervention user intervention most PARIS systems would arguably now be in landfill instead of recording music. Intelligent Devices was notified directly of all of these developments without any objection. The PARIS hardware was discontinued in 2001, and it has not be for sale, except on the used market, since.

6) That notwithstanding, the PACE copy protection scheme will not work on Windows 7 64 bit and above, and by refusing to provide new PACE response codes, the number of working PARIS systems running PARIS 3.0 will steadily decline as PC hardware fails and new codes are required.

7) Intelligent Devices has been unresponsive to repeated and persistent requests to release an update, modernize the drivers, sell the source code or release the file format. We do not feel there is any reasonable expectation of relief through that course.

THUS the PARIS user community seeks the following access:

1) The ability to circumvent the PACE copy protection from what is undeniably an obsolete system (the hardware has not been sold since 2001) because the by the time this rule will be in force, response codes to unlock the software required to use the software and the hardware will not be available.

1) The ability to circumvent the PACE copy protection from what is undeniably an obsolete system (the hardware has not been sold since 2001) because this software dongle prevents PARIS users from taking advantage of modern computer systems with more RAM while

providing no benefit to the copyright holder.