



## **Long Comment Regarding a Proposed Exemption Under 17 U.S.C. § 1201**

*Please submit a separate comment for each proposed class.*

Check here if multimedia evidence is being provided in connection with this comment

### **ITEM A. COMMENTER INFORMATION**

#### **DVD Copy Control Association**

The DVD Copy Control Association (“DVD CCA”), a not-for-profit corporation with its principal office in Morgan Hill, California, licenses the Content Scramble System (“CSS”) for use in protecting against unauthorized access to or use of prerecorded video content distributed on DVD discs. 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.

#### **Advanced Access Content System Licensing Administrator**

The Advanced Access Content System Licensing Administrator, LLC (“AACSLA”), is a cross-industry limited liability company with its principal offices in Beaverton, Oregon. The Founders of AACSLA are Warner Bros., Disney, Microsoft, Intel, Toshiba, Panasonic, Sony, and IBM. AACSLA licenses the Advanced Access Content System (“AACSLA”) technology that it developed for the protection of high definition audiovisual content distributed on optical media. That technology is associated with Blu-ray Discs. AACSLA’s 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 Blu-ray disc players and Blu-ray disc drives.

As ultra-high definition products are entering the marketplace, AACSLA has developed a separate technology for the distribution of audiovisual content in ultra-high definition digital format. This technology is identified as AACSLA2, and not AACSLA 2.0. This distinction in nomenclature is significant, as the latter would suggest that it replaced AACSLA distributed on Blu-ray. It has not. AACSLA2 is a distinct technology that protects audiovisual content distributed on Ultra HD (UHD) Blu-ray discs, a distinct optical disc format which will not play on legacy (HD) Blu-ray players. To the extent a proposal mentions CSS and/or AACSLA, but does not explicitly include AACSLA2, such mention should not be inferred to include AACSLA2. Indeed, AACSLA2 is not subject to the proposed exemptions put forward by any Class 2 proponents.

## **REPRESENTATIVES**

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## **ITEM B. PROPOSED CLASS ADDRESSED**

*Proposed Class 2: Audiovisual Works — Texting*

## **ITEM C. OVERVIEW**

For the reasons stated below DVD CCA and AACSLA object to the creation of the proposed exemption.

#### **ITEM D. TECHNOLOGICAL PROTECTION MEASURE(S) AND METHOD(S) OF CIRCUMVENTION**

The TPMs of concern to DVD CCA and AACS LA are the Content Scramble System (“CSS”) used to protect copyright motion picture content on DVDs and the Advanced Access Content System (“AACS”) used to protect copyrighted motion picture content on Blu-ray Discs.

#### **ITEM E. ASSERTED ADVERSE EFFECTS ON NONINFRINGING USES**

DVD CCA and AACS LA object to the proposed class to enable the creation of clips for the purpose of texting. In the Notice of Proposed Rulemaking, the Register asked for

additional detail about the scope of the proposed exemption from SolaByte or others, such as whether the exemption would be available for commercial services. Commenters should describe with specificity the relevant TPMs and whether their presence is adversely affecting noninfringing uses, including identifying whether eligible users may access expressive clips through alternate channels that do not require circumvention and the legal basis for concluding that the proposed uses are likely to be noninfringing. Similarly, commenters should address any anticipated effect that circumvention of TPMs would have on the market for or value of the relevant copyrighted works, which appears to extend to the same broad swatch of motion pictures as Class 1.<sup>1</sup>

As noted, SolaByte Corp. filed the initial petition; however, it has not filed any initial comments in support of the petition, nor, more importantly has it provided any legal or factual basis for the Register to consider the request. Free Software Foundation, the only proponent to file supporting comments in the class, provides merely the same brief manifesto it filed in all the classes. The crux of that comment is “all users have a legitimate right to circumvent controls on audiovisual works, regardless of the medium or the particular use.”

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<sup>1</sup> Exemptions to Permit Circumvention of Access Controls on Copyrighted Works 85 Fed. Reg. 65293, 65303 (Oct. 15, 2020) (Notice of Proposed Rulemaking “NPRM”).

In the 2006 Recommendation, the Register rejected proposing a class that would permit circumvention of DVDs to alter the region code, finding the evidence in support of the proposal to be *de minimis*.<sup>2</sup> In the prior two proceedings (2000 and 2003), she had denied the proposal on more extensive records than what was provided in 2006. In the 2006 proceeding, proponents asserted “that since laptop computers are designed to be usable anywhere in the world, DVDs purchased in different regions, for instance while traveling, should all be accessible on the same laptop computer.”<sup>3</sup>

Here, the statement of proponents, who have filed in every class merely a statement of their belief that all users should have the legal right to circumvent TPMs on all works, for any use, cannot be the factual or legal basis upon which the proposed class can be granted. In the absence of a substantive showing by either the original or subsequent proponents, there is no basis for the Register to consider further the proposed class. Consequently, the proposed class should be rejected.

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<sup>2</sup> 2006 Recommendation at 76.

<sup>3</sup> *Id.* at 75.