

**Before the
Copyright Office
Library of Congress
Washington, D.C. 20024**

In the Matter of

Exemption to Prohibition on
Circumvention of Copyright
Protection Systems for Access
Control Technologies

Docket No. 2014-07

**PETITION FOR A PROPOSED EXEMPTION
UNDER 17 U.S.C. § 1201
OF
PUBLIC KNOWLEDGE**

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I. Submitter and Contact Information

This proposal is respectfully submitted by Public Knowledge (“Proponent”). Our contact information is as follows:

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II. Brief Overview of Proposed Exemption

Proponent seeks an exemption for digital rights management-encrypted motion pictures and other audiovisual works on lawfully made and lawfully acquired DVDs, Blu-ray discs (“BDs”), and downloaded files, when circumvention is accomplished for the purpose of noncommercial space shifting of the contained audiovisual content. The technological protection measure (“TPM”) that controls access to the audiovisual content at issue is any DRM encryption standard such as Content Scramble System, Content Protection for Recordable Media, or Advanced Encryption Standard. DRM encryption standards such as these protect access to motion pictures contained on most commercially distributed copies of audiovisual works.

III. Copyrighted Works Sought to Be Accessed

The copyrighted works at issue are motion pictures and other audiovisual works that are distributed by sale of the copy to a user, on DVD, BD, or as a download.

IV. Technological Protection Measure

The TPM at issue is any DRM encryption standard such as Content Scramble System, Content Protection for Recordable Media, or Advanced Encryption Standard. DRM encryption protects access to motion pictures contained on most commercially distributed copies of audiovisual works.

V. Noninfringing Uses

The noninfringing use at issue is reproduction of the work for the purpose of noncommercial space shifting. Reproduction of motion pictures on DVDs or BDs for the purpose of noncommercial space shifting is a fair use under section 107. Proponent anticipates that owners of copies of audiovisual works will use the works in this way primarily for two reasons. First, copy owners wish to continue being able to access and enjoy the copies of the works they have bought, even as the formats in which they purchased them (such as DVD) become increasingly obsolete. Second, copy owners wish to convert their copies to a different format for backup purposes.

Proponent anticipates that use of the exemption would be widespread. As the cost of computer data storage declines and the efficiency of digital video formats improves, many people are choosing to replace physical media with digital files. Rather than re-purchasing their entire library of motion pictures, many would like to simply convert copies they already own to a different format.

VI. Adverse Effects

Because these encryption standards make it impossible to space shift a copy of a work, and because noncommercial space shifting is a noninfringing use,

the inability to circumvent these encryption standards adversely affect this noninfringing use by preventing consumers from making it.

Consumers suffer actual financial harm as a consequence. As technology evolves and playback facilities for certain physical media become scarcer, owners of copies of works fixed on those physical media are being deprived of the value of their collections, some of which include hundreds or even thousands of motion picture titles. Instead of being able to space shift the copies they already own – as fair use would allow them to do – these individuals are forced to pay additional fees for the right to watch motion pictures they already own copies of on different playback facilities.

Consumers who purchased a copy of a work so that they could watch it over and over again now find themselves unable to make use of that copy as devices evolve and optical media become obsolete. For example, most computing devices produced today lack optical media drives required to view non-space-shifted audiovisual works. In addition, consumers are unable to make use of optical media players in the same range of circumstances where tablets and other devices are allowed. For example, some airlines that allow the use of select portable electronic devices during takeoff and landing will allow tablets during those times, but not DVD players.¹

Not only are optical media becoming obsolete, but the discs themselves will degrade over time.² Indeed, one study of the relative stabilities of optical

¹ United Airlines, *Electronic Devices*, <http://www.united.com/web/en-US/content/travel/baggage/devices.aspx> (last visited Nov. 3, 2014) (“Small, lightweight devices must be held in the passenger’s hands, placed in the seatback pocket or stowed. Larger electronic devices, like laptops, must still be stored securely in an overhead bin or another approved stowage area during takeoff and landing.”); Delta, *FAQs – Portable Electronic Devices*, http://www.delta.com/content/www/en_US/support/faqs/during-your-trip/personal-electronic-devices.html (last visited Nov. 3, 2014) (“DVD players, laptop computers, and other devices that exceed the size/weight restrictions must be stowed for taxi, takeoff and landing.”).

² See generally U.S. Nat’l Inst. Standards & Tech., *Information Technology: Care and Handling of CDs and DVDs – A Guide for Librarians and Archivists* (2003), available at

discs found that commercial DVDs degraded significantly faster than commercially-produced audio CDs.³ To preserve the contents of DVDs and BDs – copies of motion pictures and other audiovisual content that consumers have paid to own – consumers need to be able to extract those contents and shift them to a different format.

Furthermore, consumers purchase copies of works fixed in physical media so that they can own the copies of the works these media house. But as physical media are replaced by streaming services that do not transfer ownership of copies to consumers, consumers who wish to own copies of their favorite works may have no choice but to purchase copies housed on physical media first, then convert those copies to different media.

Similar considerations affect lawful purchasers of downloaded copies of audiovisual works. As devices change, consumers should not be required to repurchase copies they have already paid for each time a file format changes. Nor should they be unable to make backup copies of their movie collections in case of corrupted, lost, or stolen files.

<http://www.itl.nist.gov/iad/894.05/docs/CDandDVDCareandHandlingGuide.pdf>.

³ Joe Iraci, *The Relative Stabilities of Optical Disc Formats*, 26 *Restaurator: Int'l J. Preservation Lib. & Archival Material* 134, 142 (2005).

VII. Conclusion

For the foregoing reasons, Proponent asks the Copyright Office to issue an exemption under 17 U.S.C. § 1201 for lawfully acquired digital-rights-management-encrypted motion pictures and other audiovisual works on lawfully made and lawfully acquired audiovisual DVDs, Blu-ray discs (“BDs”), and purchased downloads, when circumvention is accomplished for the purpose of noncommercial space shifting of the contained audiovisual content.

By:

Respectfully submitted,

/s/

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