

Name:

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Proposed class or classes of copyrighted work(s) to be exempted:

Digital Broadcasts which employ measures that protect "access" to copyrighted works which disable, prevent, or otherwise make impossible, time-shifting of programs.

Brief summary of the argument(s) in support of the exemption proposed above:

There is legal precedent which provides that time-shifting is noninfringing use. This particular noninfringing use can not be reasonably accomplished by means of alternative authorized copies.

Argument(s) in support of the exemption proposed above:

According to the U.S. Supreme Court in *SONY CORP. v. UNIVERSAL CITY STUDIOS, INC.*, 464 U.S. 417, "...the District Court's findings reveal that even the unauthorized home time-shifting of respondents' programs is legitimate fair use." Thus, there is legal precedent which provides that time-shifting is fair use. Fair use is, by definition, noninfringing use.

This particular noninfringing use of a copyrighted "work" can not be reasonably accomplished by means of alternative authorized copies of the work available in the marketplace because such authorized copies of the work do not become available in some cases until greater than a year after the broadcast. This means that a particular program within a series of programs (i.e., a television series) will not be available before the next program in the series in an authorized alternative copy.

Since fair use is by definition noninfringing use, time-shifting has legal precedent as fair use, and no authorized alternative will be available in order to facilitate time-shifting, any measures that protect "access" to copyrighted works which disable, prevent, or otherwise make impossible, time-shifting of television or radio programs should be exempt from the prohibition against circumvention of technological measures that control access to copyrighted works.