

## SUBMITTER'S NAME AND CONTACT INFORMATION

Mark Wilkins  
1250 Garbo Way Apt 303  
San Jose  
CA 95117

408-615-1886  
mark\_wilkins@yahoo.com

## PROPOSED CLASS OF WORKS TO BE EXEMPTED:

Audiovisual works presented in digital format, when used by a participant in the original creation of such work in the assembly of a brief collection of excerpts for purposes of soliciting business or employment, commonly known as a "portfolio" or "demo reel."

## ABSTRACT:

The DMCA's prohibition on circumventing access to the raw digital image content stored in protected digital distribution media such as DVDs unduly inhibits workers engaged in the production of audiovisual works such as motion pictures from being able to engage in the practice, generally understood to be "fair use" under the copyright act, of compiling portfolios or demo reels, which are presentations of one's prior work used to secure employment.

Since alternative nonprotected media such as VHS are either of insufficient quality for the application or are not available, this use of this class of work should qualify for an exemption from the DMCA's requirements prohibiting the circumvention of access technologies.

## ARGUMENT:

Within the media industry, creative workers generally seek employment and business through the use of narrowly-focused portfolios or demo reels, which serve as presentations of their work for evaluation by prospective employers. All major employers in the media field require such submissions.

For example, the PDI/DreamWorks web site (at <http://www.pdi.com/recruit/apply.htm>) describes the requirement for and function of a demo reel as such:

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"All submissions for artist roles must be accompanied by a reel and/or portfolio to demonstrate your artistic ability. E-mailed resumes for artist roles will not be reviewed...

"At PDI/DreamWorks, we review thousands of reels every year..."

" A reel is generally a compilation of work created as a member of a team -- either at a production facility or in an academic setting."

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Though motion picture demo reels are usually delivered on video tape, either VHS or 3/4" U-matic tape, to produce an image of sufficient quality it is necessary to work from the highest-quality source material. Dubbing from a commercially available VHS tape used as source material introduces unacceptable image quality disruptions, including color blooming, video noise, and reduced resolution that can eliminate the value of the demo reel presentation.

Higher quality source material is generally available only on DVD, and is protected using the type of access control whose circumvention is prohibited in the DMCA.

Generally, use of this kind, even without explicit permission by the employer, has been understood by the courts and within the media industry to be fair use, and thus noninfringing, provided that it does not violate nondisclosure agreements, and provided that it satisfies similar requirements of fair use in other contexts (such as that it be a brief excerpt that does not tend to reduce the value of the original.)

In the absence of an exemption for this purpose from the DMCA, artists remain beholden to their former employers for access to the relevant raw material, who may wish to limit such access to prevent the artists, often no longer their employees, from marketing their skills to competitors as easily.

Most artists resort to using DMCA-prohibited tools to extract digital information from commercially available DVDs for this purpose. "DVD ripping" software is available on an under-the-table basis via the Internet. However, this places those artists at risk of prosecution and puts artists who are concerned about their legal obligations at a disadvantage in the employment marketplace.

To the extent that non-digital media (such as VHS tapes in the case of motion pictures) are available, whether such media are adequate as source material for this purpose depends on the context. In the example of a computer graphics artist wishing to use material from a motion picture to seek further employment, using a VHS tape greatly reduces the quality of the image, often crops portions of the image from the screen (whereas DVDs often, in practice, are "letterboxed" to display the entire image), and makes editing of a compilation exponentially more difficult by virtue of the additional step of conversion to a digital medium.

Certain professions, for example computer graphics artists who do fine detail work such as digital painting, require the highest possible quality of source material to be able to convince a potential employer of the quality of their work. The limitations of starting with VHS source material, or 3/4" source material provided by a former employer, may obscure detail in the image to such an extent that the presentation is useless.

Since the development of portfolios and demo reels is essential to the continued functioning of the media industry whose rights are protected by the DMCA, since the behavior in question is generally

agreed by all parties to be fair use under the Copyright Act, and since lack of access to the highest available quality of raw material limits the usefulness of the noninfringing activity, this suggested exemption is within the parameters of the Copyright Office's guidelines and should be enacted.