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August 5, 2003

BY ELECTRONIC DELIVERY

David O. Carson, Esq.
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Copyright Office
Library of Congress
101 Independence Avenue, S.E.
Washington, DC 20559-6000

**Re: Docket No. RM 2002-4
Exemption to Prohibition on Circumvention of
Copyright Protection Systems for Access Control
Technologies**

Dear Mr. Carson:

On behalf of our client, the DVD Copy Control Association, Inc. ("DVD CCA"), this letter responds to your letter of July 16, 2003, requesting that various participants in the Copyright Office's hearings in the above-captioned proceeding respond to certain further questions from the Copyright Office. Because DVD CCA represents a broad spectrum of entities in the DVD video business – from the consumer electronics, information technology, and motion picture industries – we are responding separately from the others to whom your letter was addressed. We have tried to coordinate our response to the extent possible, however, to minimize repetition.

1. Assume that a person is the lawful owner of a copy of a motion picture on a CSS-encrypted DVD which is encoded for a region other than region 1.

A. Should that person be permitted to view that motion picture on that DVD in the United States?

Response: As the Register recognized in the 2000 rulemaking, and as more fully fleshed out in our prior filings in this proceeding, there are legitimate reasons to have a system in which the expectation is that consumers in one particular

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region of the world may be inhibited from viewing DVD video material coded for primary viewing in a different region of the world. That said, it is also DVD CCA's view that neither U.S. law nor its own license precludes viewing a CSS encrypted, non-region 1 disc in the United States using a CSS licensed playback product where the region code of that playback product is properly set to the region of the disc, so long as the viewing is not otherwise infringing (e.g., through an unlicensed public performance). See our responses to questions 1. E. and F., below.

B. If that person uses a multizone DVD player in the United States to play that DVD, is that person engaging in noninfringing use of the motion picture?

Response: Since DVD CCA's license to use CSS to decrypt motion pictures encrypted using CSS on DVD video discs is conditioned on DVD players being set to a single region (subject to resetting in the case of DVD drives for computers), DVD CCA disputes the premise of the question. A multizone player capable of decrypting CSS encrypted DVD discs should not exist. Such a player is either (a) an unauthorized modification of a CSS licensed product, and the original player may further be in violation of the CSS requirements that the implementation of region code response in such products be made difficult to modify or (b) an unlicensed – and, hence, infringing – use of DVD CCA's intellectual property (patents, copyrights, and trade secrets for the decryption of CSS encrypted DVD videos). That said, assuming no other infringing activity (e.g., an unlicensed public performance of the work), DVD CCA believes that the mere use of a multizone device by an individual consumer to play back a DVD video disc is a non-infringing use of the motion picture.

C. Is that person's use of the multizone DVD player to play that DVD encoded for a region other than region 1 an act of circumvention prohibited by 17 U.S.C. § 1201(a)(1)?

Response: DVD CCA takes no position on the response to this question.¹

D. Are your responses to questions 1.B. and C. affected by whether the multizone player was manufactured in the U.S. or in a foreign country where

¹ While appearing as counsel to DVD CCA, the undersigned was asked a similar question at the May 2 hearing, and responded at that time "I don't think so." (Tr. at 151, May 2, 2003 Rulemaking Hearing, Copyright Office). Subsequent to that hearing, it has become apparent that there are different views within DVD CCA on the response to this question. Accordingly, as an organization, DVD CCA takes no position on the response to this question.

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no prohibitions on the circumvention of technological measures that protect access exist? Would your responses be affected by whether a third-party intermediary modified a licensed and fully compliant DVD player to a multizone player? Does it make any difference whether the manufacturer of the DVD player is licensed by DVD CCA?

Response: No (to all three questions).

E. If that person, in the United States, uses a non-region 1, single-zone DVD player which is set to play DVDs from the region encoded on the DVD, is that person engaging in a noninfringing use of the motion picture?

Response: Yes, assuming that there is no other activity constituting infringement (e.g., through an unlicensed public performance).

F. Is that person's use of the non-region 1, single-zone DVD player set to play DVDs from the region encoded on that DVD an act of circumvention prohibited by 17 U.S.C. § 1201(a)(1)?

Response: No.

G. Would your responses to questions 1.E. and F. be affected by whether the non-region 1, single-zone player was manufactured in the U.S. or in a foreign country where no prohibitions on the circumvention of technological measures that protect access exist? Would those responses be affected by whether the third party intermediary modified a licensed and fully compliant DVD player to be a non-region 1, single zone player? Does it make any difference whether the manufacturer of the DVD player is licensed by DVD CCA?

Response: As for the first question, we see no difference. As for the second question (and, thus, the third question as well), we see no reason why a person would modify a licensed and fully compliant DVD player so that it becomes a single region player set for a region other than the one for which it was originally designated. One could simply purchase a player that is set to the desired region in the first place (or use a DVD drive that is capable of being reset without unauthorized modification).

2. Are multizone DVD players (other than DVD drives for computers) easily available for purchase by consumers in the United States? If so, please provide details including typical costs and marketing channels for multizone players.

Response: As indicated above, DVD CCA considers a multizone player that is capable of decrypting CSS content from DVD discs to be either a violation of the CSS license agreement and related specifications or an infringement on DVD CCA's

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intellectual property (as an unlicensed use of CSS-related trade secrets, patents, and copyrights).

3. Are DVD players (other than DVD drives for computers) set to regions other than region 1 easily available for purchase by consumers in the United States? If so, please provide details including typical costs and marketing channels for multizone players.

Response: DVD CCA does not limit the sale of players based on the region for which they are set. DVD CCA also does not collect information about where or how its licensed products are distributed. Accordingly, while we have no objection to the sale of a non-region 1 player in the United States, we also have no information about such sales.

4. It is our understanding that the region on a DVD drive for a computer may be reset up to 5 times.

DVD CCA comment – Before getting to the specific questions, below, the following is intended as a clarification of the situation for resetting the region of a DVD drive for a computer. DVD drives for computers may be reset by the consumer up to 5 times, and then may be taken to a service center authorized by the manufacturer of the drive (or the computer distributor, if the drive was sold as part of a completed computer) to allow the consumer to make an additional 5 resets. This process may continue so as to allow the consumer up to 25 resets of the region code for the DVD drive.

A. Are there authorized DVD players other than DVD drives for computers for which the region may similarly be reset? If not, why not?

Response: The CSS license and specifications do not permit the regions for DVD players other than DVD drives for computers to be reset once they are sold by the original manufacturer. The reasons for this are set forth in response to B, below.

B. Is the failure (if any) to make such a feature available on DVD players other than DVD drives for computers based in whole or in part on a legal analysis that finds a relevant distinction between the two types of DVD players? If so, please describe that analysis.

Response: The decision to make a distinction was based on three factors: First, the distribution patterns for CE products, such as DVD players, and computer products, such as DVD drives, were understood to be different in that a manufacturer would not know where a DVD drive was going to be shipped and sold until

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very late in the manufacturing process (or perhaps after the manufacturing process was complete), whereas the regional destination for CE products is typically known prior to, or early during, the manufacturing process. Second, and partially related to the first point, CE-type DVD players are typically dedicated to a particular television standard (e.g., NTSC or PAL) during the manufacturing process and, accordingly, are naturally “regionalized.” DVD drives are formatted for use with computers, where the video transport systems are not regionalized. Third, laptop computers are, by their nature, mobile and likely to be used in multiple regions during their useful lives. It was considered that resetting up to 25 times would be sufficient to allow a typical user flexibility to use a laptop to watch movies in different regions during the useful life of a typical laptop.

C. What are the typical costs associated with resetting the region code on a DVD drive for a computer? Please describe how the region code is reset.

Response: Although the specific means of resetting is a matter for each manufacturer to determine (i.e., there is no prescribed method for resetting in the DVD CCA specifications), it is DVD CCA’s understanding that the 5 consumer resets (allowable without reference to a service center) are easy to perform and impose no additional costs on the consumer. The cost of a service center reinitialization of the 5 consumer resets is up to the service center and manufacturer and, for the reasons noted above, DVD CCA has no information about the “typical” costs of such actions.

5. Is it technologically possible for a person to modify a licensed DVD player to ignore the UOP blocking commands in order to reactivate the fast-forward function of a lawful copy of a DVD? If so, would the performance of a CSS-encrypted motion picture on that lawful DVD be affected or prevented by such a modification? Does such a modification of the player affect the legal status of the performance of a motion picture on the DVD, either under section 106 or section 1201(a)(1)? Please explain fully.


Response: As stated in our earlier responses, DVD CCA and the CSS license and specifications have nothing to do with the UOP blocking commands related to the fast-forward function of DVD products. To the extent that the first question uses the term “licensed” in relation to CSS, we reiterate that the CSS license has no requirements that relate to these functions. In that vein, and in response to the second question, to our understanding, there would be no effect on the CSS-related performance of a DVD playback system or DVD disc due to modification of a playback system to ignore the UOP blocking commands.

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Again, we appreciate the opportunity to participate in this proceeding and are prepared to respond to any further questions that the Copyright Office may have.

Sincerely yours,


Bruce H. Turnbull