

Before the
United States Copyright Office, Library of Congress
Washington, DC

In the Matter of)	
Exemption to Prohibition on)	
Circumvention of Copyright Protection)	Docket No. 2014–07
Systems for Access Control)	
Technologies)	

Petition for Exemption
by
Authors Alliance and Bobette Buster

1. Submitter and Contact Information

Pursuant to 17 U.S.C. § 1201(a)(1)(C)-(D), Authors Alliance proposes an exemption to the Digital Millennium Copyright Act through its authorized representatives, the UCI Intellectual Property, Arts, and Technology Clinic and the Samuelson-Glushko Technology Law & Policy Clinic.

Parties seeking exemption: Authors Alliance; Bobette Buster

Authors Alliance promotes authorship for the public good by supporting authors who write to be read. We embrace the unprecedented potential digital networks have for the creation and distribution of knowledge and culture. We represent the interests of authors who want to harness this potential to share their creations more broadly in order to serve the public good. The mission of Authors Alliance is to further the public interest in facilitating widespread access to works of authorship by assisting and representing authors who want to disseminate knowledge and products of the imagination broadly. We provide information and tools designed to help authors better understand and manage key legal, technological, and institutional aspects of authorship in the digital age. For more information, visit <http://www.authorsalliance.org>.

Bobette Buster is an Adjunct Professor in the University of Southern California’s Graduate School of Cinematic Arts’ Peter Stark Program; an international guest faculty lecturer (Pixar Studios, Disney, Sony Animation, La Fernis/Paris, Catholic University of Milan, Media Business School/Spain); a feature documentary producer and screenwriter; writer of *Do Story: How to Tell Your Story So the World Listens* (The Do Book Co., 2013); and author of the e-book *Deconstructing Master Filmmakers*.

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2. Brief Overview of Proposed Exemption

In 2012, the Librarian of Congress granted an exemption to the Digital Millennium Copyright Act (“DMCA”) that allows authors to circumvent technological protection measures (“TPMs”) on DVDs and online distribution services for purposes of criticism and commentary in multimedia e-books.¹ Over the last three years, the need for an exemption for multimedia e-book authors has only increased; new authorship tools, sophisticated digital distribution networks, and widespread consumer adoption of e-book readers mean that more authors than ever are poised to create multimedia e-books—but TPMs prevent them from doing so at nearly every turn.

Authors Alliance therefore proposes an exemption that permits authors of multimedia e-books to circumvent Content Scramble System (“CSS”) on DVDs, Advanced Access Content System (“AACSS”) on Blu-ray discs, and encryption and authentication protocols on digitally transmitted video in order to make fair use of motion picture content in their e-books.

3. Copyrighted Works Sought to be Accessed

We propose an exemption that would allow authors to access motion pictures, a focused subset of “motion pictures and other audiovisual works,” a category of copyrightable works enumerated in Section 102 of the Copyright Act.² This proposed class of copyrighted material should be further narrowed to include only motion picture material obtained from the following lawfully acquired sources: DVDs; Blu-ray discs; and digital video transmissions, such as streaming video, digital downloads, and transmissions captured by digital video recorders.

¹ 37 C.F.R. § 201.40(b)(4)(iii), (5)(iii) (2012).

² 17 U.S.C. § 102(a)(6) (2012).

4. Technological Protection Measures

We propose an exemption that permits circumvention, in certain circumstances, of Content Scramble System (“CSS”) on DVDs and Advanced Access Content System (“AACSS”) on Blu-ray discs. These systems use encryption and authentication protocols either to restrict access or to restrict both access and use.³

The proposed exemption will also cover technologies that restrict access to digitally transmitted video. While the exact mechanisms that digital video delivery systems use vary⁴ and will continue to do so over the next three years,⁵ they generally function to prevent unauthorized access to media content by encrypting the media content and implementing authentication protocols.⁶ For this reason, the proposed exemption will define TPMs on digitally transmitted video by their function and not by a static list of technologies.⁷

5. Noninfringing Uses

We seek an exemption that permits authors to make fair use of excerpts of motion pictures embedded in multimedia e-books they create. Fair uses we seek to facilitate with this exemption include criticism and comment, as well as illustration, demonstration, or further analysis of points being made in the text of the e-books. These activities are, of course, paradigmatic fair uses.⁸

³ Section 1201 Rulemaking: Fifth Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention, Recommendation of the Register of Copyrights 135 (Oct. 2012) [hereinafter 2012 Recommendation] (“The record demonstrates that CSS technology protecting DVDs, AACSS technology protecting Blu-ray discs, and various systems protecting motion pictures available via online distribution services are technological protection measures that effectively control access to copyrighted works. It also shows that there are significant amounts of noninfringing uses in which noncommercial video creators, documentary filmmakers, multimedia ebook authors, and certain educational users seek to engage that are, or are likely to be, adversely affected by the prohibition on circumvention.”)

⁴ For example, online distribution services use different DRM systems depending on the type of application used, the type of device used, and even whether the internet browser supports HTML5 or a previous version of HTML. *See, e.g.*, Sebastian Anthony, Netflix Switches from Silverlight to HTML5 in Windows 8.1, Reduces CPU Usage Dramatically, EXTREME TECH (June 28, 2013, 7:55 AM), <http://www.extremetech.com/computing/159960-netflix-switches-from-silverlight-to-html5-in-windows-8-1-reduces-cpu-usage-dramatically> (discussing Netflix’s use of different DRM technologies based on web browsers’ HTML5 compatibility).

⁵ *See* Letter from Lawrence E. Strickling, Adm’r, Nat’l Telecomms. & Information Admin. 22 n.134 (Sept. 21, 2012) *available at* http://copyright.gov/1201/2012/2012_NTIA_Letter.pdf [hereinafter 2012 NTIA Letter] (“Proponents have explained that online distributors constantly change access controls with ease.”).

⁶ *See* Statement of Eric Rescorla on Digitally Transmitted Video, Comment of Int’l Documentary Ass’n et al., Docket No. RM 2011-7, at 39 (2011) *available at* http://www.copyright.gov/1201/2011/initial/IDA_Mark_Berger.pdf.

⁷ *See* 37 C.F.R. § 201.40(b)(5) (2012) (establishing exemption for “[m]otion pictures . . . that are protected by various technological protection measures . . .”).

⁸ *See* 17 U.S.C. § 107 (2012); 2012 Recommendation, *supra* note 3, at 126-27 (“Proponents . . . have shown that a significant number of the proposed uses reproduce short excerpts of motion pictures for the purposes of criticism and commentary. Such uses fall within the favored purposes referenced in the preamble of Section 107 and therefore are likely to be fair uses.”); 2012 NTIA Letter, *supra* note 5, at 24 (“Proponents advanced a proposed exemption for multimedia e-books that holds great potential for educational and noninfringing uses such as comment and criticism.”); Comment of Mark Berger et al., Docket No. RM 2011-7, at 15 (2011).

Our proposed exemption will be narrowly tailored to the following non-infringing uses and class of users:

- Authors
- Who seek to make fair use
- By embedding motion picture content in e-books

6. Adverse Effects

The anti-circumvention provisions in the DMCA adversely affect multimedia e-book authors' ability to make fair use by preventing access to the motion picture excerpts they seek to use. In today's digital environment, TPMs render an even greater amount of copyrighted motion picture material inaccessible than in 2012. In many cases, authors wishing to comment on a film, analyze a television show or music video, discuss a sequence of historical events, or create a parody cannot access that content in any lawful format that does not contain TPMs. As a result, authors must refrain from making the fair use in question or, in some cases, shelve their project entirely.

Only an exemption to the DMCA that permits circumvention of TPMs on DVDs, Blu-ray discs, and digitally transmitted video in order to make fair use of motion picture excerpts in multimedia e-books will remedy these adverse effects.

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