Before
The Copyright Office
Library of Congress

In the Matter of

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

Docket No. RM 2011-7

Reply Comments of Public Knowledge

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Introduction and Summary

Public Knowledge submits the following reply comments in this proceeding and urges the Register to recommend that the Librarian of Congress grant the requested exemption. Nothing in the comments submitted by others (in particular, the Joint Comments of AAP, ASMP, MPAA, et al. and the DVD Copy Control Association) rebuts the underlying legitimacy of consumers’ desire to space shift motion pictures they own on DVD, users’ need to circumvent technical protection measures in order to do so, or the conclusion that granting the exemption would have a minimal, if any, impact on online copyright infringement.

These reply comments address several arguments raised by other commenters. The granting of the requested exemption does not burden copyright holders – the ability for deliberate infringers to create illicit copies is not enhanced by granting the exemption, nor would lawful users circumventing access controls increase the number of infringing reproductions. The requested exemption is narrowly drawn, and consumers who have purchased DVDs and desire to space shift them will not be confused by this rulemaking into assuming that illegal downloads of motion pictures are suddenly fair game. In addition, the Register is fully capable of recognizing the noninfringing nature of a use without requiring that some federal litigation have mirrored the facts of the proposed exemption. Finally, proposed alternatives to the exemption, including camcording, screen capture, and repurchase of motion pictures as downloads, are inadequate substitutes for the ability for consumers to circumvent access controls for the lawful purpose of space shifting.
Discussion

A. The Register Must Consider This Exemption in Light of Current Conditions.

Paradoxically, Motion Picture Association of America (MPAA) and the DVD Copy Control Association (DVD CCA) are correct both when they insist that the Register must review each exemption independently of past determinations and when they extensively cite the Register’s prior findings. If societal conditions have changed since previous rulemakings, the Register, and the public, would be ill served by relying on inaccurate, out-of-date findings. However, if prior recommendations contain determinations based on underlying facts that have not changed, it is reasonable for the Register to consult those conclusions.

B. The Requested Exemption Imposes A Minimal Burden on Copyright Owners.

As the Register recognized in the 2010 proceeding, the connection between CSS and the availability of motion pictures in digital formats is tenuous. Circumvention tools have long been available online, and MPAA member studios regularly recognize that CSS-protected DVDs are already the source of illegal reproductions of motion pictures available online.

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1 Joint Comments of AAP, ASMP, BSA, ESA, MPAA, PACA, and RIAA (MPAA Comments). Although the MPAA filed jointly with a number of rightsholders, Public Knowledge will refer to these comments as the comments of the MPAA alone on the assumption that, of all of the Joint Commenters, only the MPAA has a specific interest in motion pictures contained on DVD.

2 Comments of the DVD Copy Control Association (DVD CCA Comments).


4 See Public Knowledge Comments, 16-20.
It must be acknowledged that DVD CSS has been compromised for over a decade. From a technical standpoint, it no longer prevents unauthorized reproductions of motion pictures contained on DVDs. However, the existence of CSS can provide additional legal protections for motion pictures distributed on DVD. The Digital Millennium Copyright Act (DMCA) gives rightsholders an additional legal avenue of recourse to punish those who make unauthorized copies of motion pictures.

Unfortunately, that legal protection can be construed broadly. Congress recognized this and granted the Librarian of Congress, upon recommendation of the Register and the Copyright Office, the authority to intervene in instances where the powers created by the DMCA extend beyond discouraging wrongdoing and instead prevent legitimate activity. That is the purpose of this proceeding, and of Public Knowledge’s requested exemption. Public Knowledge is not seeking the elimination of CSS, nor of the ability that rightsholders have under the DMCA to punish its circumvention for unlawful purposes. Instead, Public Knowledge merely hopes to remove DMCA provisions that serve as a barrier to the legitimate activity of space shifting motion pictures contained on DVD.

\[ i. \quad \textit{Correlation between access controls and digital distribution is not necessarily causation.} \]

Both the MPAA and DVD CCA describe the growth of digital media distribution as a function of the availability of legal protections for access controls.\(^5\) However, while the rise of the digital marketplace for media is temporally correlated with the implementation of the DMCA, direct causation is less clear.

\(^5\) See MPAA Comments at 8-9; DVD CCA Comments at 2.
Digital distribution of media existed, and was even widespread, before the DMCA. Recording Industry Association of America (RIAA) members first released music on digital compact discs almost twenty years prior to the passage of the DMCA. MPAA members released the first motion picture on DVD in early 1997, well before the passage of the DMCA.

More recently, content owners have begun the process of shifting away from distributing all of their content with access controls. Once one of the most vocal supporters of access controls, the music industry has virtually abandoned it in recent years. In December of 2011, comedian Louis C.K. released a wildly successful concert film without any sort of access controls. Similarly, the show runner of the ABC Television-produced sitcom *Cougar Town* has released access control-free versions of unaired shows to fans.

It is impossible to prove how digital media distribution would or would not have evolved in the absence of legal protections for access controls. Public Knowledge merely urges the Register not to simply assume that, in the absence of legal protection for access controls, no rightsholders would feel comfortable distributing content in a digital format.

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6 *Sony History: A Great Invention 100 Years On* http://www.sony.net/Fun/SH/1-20/h5.html (accessed via The Internet Archive).
9 See *Louis CK – Live at the Beacon Theater*.
In fact, considering the current state of CSS, one could argue that MPAA member studios have been doing just that for a decade.

ii. **Fears that this exemption would increase unauthorized reproductions of motion pictures are unwarranted.**

The MPAA and DVD CCA express concern that Public Knowledge’s requested exemption would lead to an increase in unauthorized reproductions of copyrighted works.\(^{11}\) This concern suggests a fundamental misunderstanding of both the current availability of unauthorized reproductions online and the essential nature of digital technology.

As Public Knowledge explained in its exemption request, drawing primarily on sources attributable to MPAA members, we already live in a world with the “unauthorized distribution of a large number of unauthorized copies”\(^{12}\) of motion pictures.\(^{13}\) It is hard to imagine that the Register’s decision in this proceeding could have any impact on the number of unauthorized copies of motion pictures available to the public.

This is a result of the essential nature of digital technology. While the number of “sources” is incredibly relevant to the availability of unauthorized copies of physical goods, it is a nonsensical way to think about the availability of digital goods. Digital files can be copied quickly and easily. For all intents and purposes, once there is one file “in the wild” there are one thousand, or one million, files.

\(^{11}\) See MPAA Comments at 35, DVD CCA Comments at 26-29.
\(^{12}\) DVD CCA Comments at 33.
\(^{13}\) Public Knowledge Comments at 16-21.
MPAA member studio Paramount’s ability to track the source of unauthorized reproductions to a single source is a vivid illustration of this.\(^{14}\) Once there was a single copy of *Star Trek* available at a given quality level and language, there was no need for the public to find a second source. The file from that original source was simply replicated as needed. It was only displaced when a higher quality file appeared online. That is how the Chief Operating Officer of Paramount Pictures was able to trace specific copies – first Russian, then Filipino, then Ukrainian, and so on – as the files propagated across the internet.\(^{15}\)

The fact that Public Knowledge recognizes this reality should not be viewed as any sort of endorsement of copyright infringement. Unauthorized reproductions of copyrighted works are illegal, and in a perfect world would never happen. However, suggesting that an exemption allowing personal space shifting would somehow increase the number of unauthorized copies available to the public ignores current realities – realities that MPAA members are happy to detail in most other forums.

Furthermore, MPAA’s assertion that “Congress also recognized, however, that access controls ‘support new ways of disseminating copyrighted materials to users, and to safeguard the availability of legitimate uses of those material to individuals’”\(^{16}\) is correct, but not clearly relevant to this proceeding. Motion pictures have been distributed on DVD for over a decade, and CSS has been compromised for almost as long. It is hard to imagine that granting the public a narrow exemption to facilitate personal space shifting

\(^{14}\) *Id.* at 18-19.
\(^{15}\) *Id.*
could be the decision that finally convinces MPAA member studios to abandon support for the format.

\[ iii. \] **This exemption request will not eliminate CSS.**

Public Knowledge has no intention of using this proceeding to undermine the general use of technical protection measures, or to end the practice of protecting motion pictures on DVDs with CSS. Public Knowledge is merely concerned that the current combination of section 1201 and CSS prevents the public from engaging in otherwise lawful activity.

Nothing in the requested exemption would change the ability of MPAA member studios from pursuing individuals who circumvent CSS for illegitimate purposes. The exemption would not suddenly make it legal to circumvent CSS for the purposes of publicly distributing a motion picture.

DVD CCA points to discussion in its case against Kaleidescape, Inc. to legitimize its concerns about the integrity of CSS.\(^{17}\) However, the facts at issue in *Kaleidescape*\(^{18}\) are beyond the scope of this proceeding. *Kaleidescape* dealt with an alleged contractual breach regarding the CSS license by a hardware manufacturer. Kaleidescape was not trying to circumvent a technological protection measure in order to make a personal copy – an activity within the scope of section 1201(a)(1)(A) – and thus would not be covered by any exemption issued by the Librarian. Kaleidescape was not trying to circumvent technological protection measures at all – it specifically designed its system to maintain the sanctity of CSS.\(^{19}\) Furthermore, even if Kaleidescape was interested in manufacturing

\(^{17}\) *DVD CCA Comments* at 27-28.


\(^{19}\) *Id.* at 704.
a device that could circumvent an access control, that activity would implicate section 1201(a)(2), not section 1201(a)(1)(A). As such, the court’s opinions on the potential impact of Kaleidescape’s activities on the effectiveness of CSS are not relevant to this proceeding.

CCA’s characterization of the court’s finding as illustrating “the fact that licensed, compliant DVD playback products continue to dominate the marketplace, notwithstanding the availability of ‘hack’ programs through rogue websites” further unnecessarily clouds the issue in this proceeding.20 There is nothing in the DMCA to suggest that Congress was concerned with stymieing alternative ways to view motion pictures, or that the relative success or failure of those existing playback products should have any impact on the public’s ability to make legitimate use of motion pictures that they have legally purchased.

iv. The proposed class is adequately refined.

Public Knowledge’s proposed exemption is not so broad as to swallow the rule against circumvention. In fact, the exemption is precisely tailored to address a single legitimate need: that of individuals to make personal copies of motion pictures they own on DVD in order to watch them on other devices that they also own.21 This exemption is precisely as narrowly tailored as the exemption put forward as a paradigm of precision by the CCA, that for “motion pictures in the educational library of a college of university’s film or media studies department, when circumvention is accomplished for the purpose of making compilations of portions of those works for

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20 DVD CCA Comments at 29.

21 See Public Knowledge Comments at 1.
educational use in the classroom.”22 Both exemptions begin by implication with the entire universe of motion pictures available on DVD, and move quickly to limit that universe to motion pictures purchased by the relevant individual or institution. Tying circumvention to a legitimate purpose – noncommercial space shifting or educational compilations – further refines that limitation. While CCA is correct that education is a purpose explicitly enumerated in the statute, the relevance of that enumeration is diminished significantly by the fact that it is part of one factor among five to be considered, the fifth of which is the open ended “such other factors as the Librarian considers appropriate.”23 There is nothing in the statute to suggest that Congress intended to limit exemptions to purposes specifically enumerated in section 1201(a)(1)(C), and much to suggest that it did not.

v. The specter of public confusion haunting this proceeding must be banished.

According to CCA, the proposed exemption will lead to widespread “public confusion” and the total breakdown of the marketplace for digital goods.24 Once again, CCA suggests that the public is so feebleminded as to be unable to wrap its collective mind around a limited exemption to the DMCA’s anticircumvention provisions.25 As recounted in Public Knowledge’s exemption request, this baseless concern was dismissed by the Register in 2010 and there is nothing to suggest that evaluation is incorrect today.26 The public makes the distinction between authorized and unauthorized copying on a regular basis. To cite an obvious example, the public recognizes the difference

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22 *DVD CCA Comments* at 33.
24 *Id.*
25 *DVD CCA Comments* at 35-36.
26 *Public Knowledge Comments* at 9.
between copying a song from a CD to an iPod and illegally downloading a song from the internet. Copying a motion picture from a DVD to an iPod is not so fundamentally different as to completely upend that distinction.

C. The Register Has the Ability to Evaluate the Legitimacy of Personal Space Shifting.

As the Register has recognized in prior recommendations, the statutory requirement to evaluate exemptions necessarily requires a degree of independent examination.\(^{27}\) Nothing in the statute has changed since 2010 to alter this conclusion. Taken to its logical extreme, an edict to restrict exemptions to activities explicitly allowed in either statute or case law would render this entire process a nullity. This is especially true with exemptions relating to fair use. By its very nature, fair use requires a case by case analysis that balances a number of facts. While a legal determination is binding on the individual parties involved, any broader application necessarily requires additional evaluation and analysis.

The plain language of the statute anticipates that the Register evaluate whether or not the exemption involves a noninfringing use. The Register is tasked with producing a recommendation, after consulting with other agencies, that contains a determination “of whether persons who are users of a copyrighted work are, or are likely to be in the succeeding 3-year period, adversely affected” by the prohibitions in section 1201(a)(1)(A).\(^{28}\) The process of recommending, consulting, determining, and speculating necessarily requires the Register to draw conclusions beyond parroting the statute and existing case law.

\(^{27}\) See 2010 Rec. at 49-53, 91-100, 183-186.
In the past, the Register has correctly evaluated the applicability of fair use to requested exemptions:

“If, for example, based on a review and application of the statutory factors set forth in Section 107 and a review and analysis of judicial precedents, the Register and Librarian conclude that a particular use, although never before adjudicated in courts, is a fair use, the Librarian may designate a class of works based upon the conclusion that the use in question is fair if all the other requirements for designating the class have been satisfied.”29

The Register’s ability to consider fair use in this proceeding does not mean that it is standing in for judicial review of a specific activity. The requested exemption only applies to the extent that the underlying activity (in this case, noncommercial personal space shifting of motion pictures contained on DVD) does not conflict with copyright law. If a court were to find noncommercial personal space shifting of motion pictures contained on DVD to be an infringement, the Register’s determination that this exemption was warranted would offer the infringing party no protection from a copyright infringement action.

Confident in its evaluative power, the Register would be correct to determine that noncommercial personal space shifting of motion pictures contained on DVD constitutes a fair use.30 Commenters MPAA and DVD CCA have been unable to suggest any justification or cite to any case law that would lead to a contrary conclusion. Although MPAA does make mention of *UMG Recordings, Inc. v. MP3.com, Inc.*,31 that case does not address the question of personal space shifting.32 *MP3.com* examined the legality of a service purchasing recordings on CD and then making those recordings available to

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29 2010 Rec. at 12.
30 See Public Knowledge Comments at 3-7.
32 MPAA Comments at 49.
consumers, not of consumers purchasing recordings on CD and making them available to themselves.

It would be incorrect to view a shortage of recent case law on the topic of personal space shifting as an indication that it is a legally questionable activity. In fact, it suggests just the opposite. Personal space shifting is widespread and has been practiced openly for a number of years.\(^{33}\) MPAA’s co-filer, RIAA, has all but endorsed the practice in front of the Supreme Court.\(^{34}\) High-ranking employees of MPAA member studios openly discuss their own personal space shifting.\(^{35}\) Both MPAA and RIAA have extensive partnerships with Apple to distribute their content through the iTunes program – a program that incorporates the ability to space shift songs from CD to a computer. It is reasonable to assume that the reluctance of large rightsholders to attempt to punish personal space shifters does not flow from an absence of opportunity, but rather from the confidence that such an attempt would end in failure.

**D. Alternatives to Circumvention are Inadequate.**

If we have not, as the MPAA insists, “entered a ‘pay-per-use’ society where each use of a copyrighted work demands payment,” it is not for lack of trying on its part. The requested exemption applies exclusively to motion pictures that individuals have already lawfully acquired – most likely by paying for them. However, every alternative to circumvention proposed by MPAA and DVD CCA requires an individual to pay an additional fee to access a motion picture he already lawfully owns a copy of.

\(i.\) Screen recording and capture are inadequate solutions.

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\(^{33}\) *Public Knowledge Comments* at 7.

\(^{34}\) *Id.* at 6-7.

\(^{35}\) *Id.* at 7.
Instead of simply copying the contents of a DVD to another device, DVD CCA suggests two alternatives. The first is that users re-film their motion picture and then engage in post-production editing and enhancement. The second is to make use of screen capture software.

Both of these alternatives are inferior to the simple act of dragging and dropping files from a DVD to another device. They require significant investments in time, equipment, and expertise. Even then, the final product is a poor substitute for an exact digital copy that would be possible if the Register were to grant this exemption.

The need for quality extends beyond the walls of media studies classes and documentary editing rooms. MPAA member studios do not spend millions of dollars on set designers, costume designers, makeup artists, and others in order to satisfy media studies professors and documentary film makers. The time, money, and effort that goes into creating small details in motion pictures is done for the benefit of the general movie-going public. It is nonsensical to deprive individuals who have lawfully acquired motion pictures on DVD of the rich nuance that these details bring by forcing them to re-film the motion picture with their mobile phone.

The example of transferring music from CD to other devices is instructive. The process of making an exact digital copy is almost instantaneous. No one proposes that individuals play their CD on a stereo and set up microphones to re-record the sound. Similarly, no one should be required to do the equivalent in order to make a legitimate copy of a motion picture.

ii. Subscription and coupon solutions are also inadequate solutions.

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36 Id. at 11-16.
MPAA and DVD CCA also suggest that consumers could make use of other services to access motion pictures on other devices.\textsuperscript{37} While Public Knowledge commends studios for working to make motion pictures available to consumers in ways they want, these solutions are inadequate substitutes for simply making use of motion pictures that consumers already own on DVD.

As an initial matter, all of the suggestions put forward by MPAA and DVD CCA fail to recognize two important points. First, this exemption includes motion pictures that consumers have lawfully acquired. In almost all cases, this means that the consumer has already paid for the motion picture in question. Additional payments, especially when they represent a significant percentage of the original purchase price, should only be required if no other reasonable option is available. That is surely not the case here.

Second, and perhaps more importantly, motion pictures are not fungible.\textsuperscript{38} The fact that another movie may or may not be available is not relevant to a consumer who made an affirmative decision to acquire a specific motion picture. A date night built around *Something Borrowed* will not be the same if it is switched out for *Saving Private Ryan*. A child who wants to watch *Toy Story 3* will not be satisfied with *Good Night, and Good Luck*. The fact that a movie may be available is of no concern to someone who wants to watch the movie she has lawfully acquired.

\textsuperscript{37}DVD CCA Comments at 4-7; Comments of MPAA at 49-50.

\textsuperscript{38}See, e.g. *United States v. Loew’s Inc.*, 371 U.S. 38 at 48 (1962). While collections of motion pictures, such as those available through services such as Netflix and Hulu may in some cases present consumers roughly comparable choices, that choice is not at issue in this proceeding. This exemption focuses on specific, individual motion pictures lawfully acquired by individuals.
The individuals who have weighed in during this proceeding often own tens, or even hundreds, of individual motion pictures on DVD. They chose each of these motion pictures individually. These consumers did not walk into a store, or log on to an online retailer and say “here is some money – just give me anything.” The number and selection of movies available on digital services thus has a very real effect on whether they could, even absent additional costs, serve as an alternative to consumers format-shifting their own media.

a. Subscription Services

Although subscription services such as Netflix and Hulu can provide value for consumers, that value is not equivalent to the ability to make noncommercial personal copies of motion pictures already own on DVD.

First, while these services do have thousands of motion pictures available, they do not have all, or even most, motion pictures available on DVD. This is true both of popular new releases and of niche titles that appeal to small, dedicated fan bases. Furthermore, MPAA member studios are constantly changing the motion pictures that are included in the catalog of any streaming service. Even if an individual was interested in using the subscription service as a substitute for personal space shifting and that subscription service contained that motion picture in its catalog, there is no guarantee that the title would be available in the future. Of course, motion pictures that an individual owns are not subject to such seemingly random fluctuation.

39 See attached Appendix.
Second, subscription streaming services rely on an always-on high speed internet connection. All too often, this is not available.\textsuperscript{40} While carriers are beginning to roll out high speed wireless data networks capable of streaming reasonably high (although usually not DVD) quality video, those networks are often crippled with restrictive data caps that functionally prevent any consumer from streaming more than a single motion picture in a month – if that.\textsuperscript{41} Moreover, these networks are expensive to access and are far from ubiquitous. For instance, high-speed internet access is unavailable in remote areas of the country, on airplanes, and in many foreign countries – all excellent examples of places where individuals might prefer to take a single device containing a number of motion pictures they already own.

Third, it is hard to rationalize MPAA’s insistence that these services obviate the “need to ‘purchase’ a copy of a movie at all” while, in the prior sentence, noting that these services require consumers to pay “low, subscription prices.”\textsuperscript{42} For the purposes of this exemption, the precise nature of the transaction is not as relevant as the fact that a transaction exists. There is no getting around the fact that MPAA’s suggestion for consumers who wish to access motion pictures they own on DVD on other devices is for them to pay again. Regardless of the nature of the payment, the end result is the same: a second payment going to an MPAA member studio to access the same motion picture.

b. DVD2Blu

\textsuperscript{40} See, e.g. FCC, Seventh Broadband Progress Report and Order on Reconsideration, GN Docket No. 10-159 (May 20, 2011) at ¶ 23.
\textsuperscript{42} MPAA Comments at 50.
Alternatively, MPAA points to member studio Warner Bros.’ “DVD2Blu” program as an example of the legitimate alternatives available to consumers. The suggestion that a DVD couponing program is a reasonable substitute for this exemption is ridiculous. Public Knowledge only comments on it here because it highlights MPAA’s inability to recognize the purpose of this exemption.43

Warner Bros.’ DVD2Blu program essentially turns consumers’ existing DVDs into coupons that can be exchanged for discounts on a handful of Warner Bros.’ back catalog titles.44 In order to participate in the program, consumers send any motion picture on DVD in to Warner.45 That allows them to purchase a motion picture on Blu-Ray at a discounted price (between $4.95 and $6.95, plus shipping). It is possible that, in order to make use of this new disc, the consumer would also have to purchase a Blu-Ray player and/or a Blu-Ray drive. An unknown number of those Blu-Ray discs come bundled with “digital copy,” a service that allows a limited version of space shifting.

Perhaps the most striking way that DVD2Blu fails to provide a reasonable substitute for the requested exemption is that it is limited to only 100 motion pictures. Further, that number overestimates any individual’s capability to participate in the project by 400%. No household can purchase more than 25 motion pictures through the program.46 Numerous comments in this proceeding describe ownership of tens, if not hundreds, of DVDs. The likelihood that a significant number of those motion pictures

43 This shortcoming is especially curious in light of the fact that both MPAA and DVD CCA comments highlight attempts to build functionality similar to the requested exemption – but in no way resembling DVD2Blu – into the Blu-Ray protection scheme.
44 The most recent film in the program was released in 2008.
46 http://www.dvd2blu.com/faq.html
will overlap with the 25 that the commenters would be able to obtain through this program is vanishingly small.

Finally, when put in context, the cost of this program is significant. If a consumer were able to find 25 discs that interested them in Warner Bros.’ offering, it would cost them at least an additional $123.75 (lucky for them, purchases over $35 receive free shipping). For many motion pictures, $4.95 is virtually identical to the price to purchase a digital copy from a site like Amazon.com.47

Conclusion

Public Knowledge commends MPAA and DVD CCA for working to provide consumers a variety of ways to access motion pictures. It is undeniable that there are more ways to access motion pictures digitally today than at the time of the first proceeding in 2000. It is especially encouraging that MPAA and DVD CCA appear to recognize the legitimate desire of consumers to space shift motion pictures they own in developing technical protection measures for Blu-Ray.

However, this exemption request does not address motion pictures available on streaming services, or next generation physical media. This request specifically addresses motion pictures lawfully acquired on DVD and should be considered in that context. And that context argues strongly for the Librarian to grant the requested exemption.

For over a decade, DVD has been the most popular medium to distribute motion pictures to the public. For years many motion pictures – new and classic, mass market

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47 For example, DVD3Blu offers the title American History X for $4.95. Amazon.com offers the same title as a digital file for $4.99.
and niche – were only made available on DVD. As a result, consumers have purchased millions of motion pictures on DVD.\textsuperscript{48}

The widespread compromise of DVD CSS had no impact on that trend.\textsuperscript{49} For almost as long as consumers have been able to purchase motion pictures on DVD, they have had the technical means to circumvent CSS. Arguments suggesting that this exemption would somehow release pent-up demand to circumvent CSS, or add “more” copies of unauthorized motion pictures online simply ignore reality. CSS no longer imposes any restraint on individuals intent on making unauthorized copies of motion pictures. Today, the only acts that CSS prevents are those of law-abiding individuals who wish, for example, to space shift motion pictures contained on DVDs they lawfully acquired.

The proposed exemption is narrowly tailored to address that specific situation. It does not cover individuals intent on illegally distributing copies of motion pictures (either online or on physical media). It would not “confuse” the public by suggesting that unauthorized widespread distribution of copyrighted works is somehow legal.

As noted in the original exemption request, the Register is in an enviable position. Evaluating this exemption requires balancing an unquestionable public good against a total absence of harm to rightsholders. The day after this exemption is granted, copyright infringement will still be illegal. Circumventing technical protection measures for illegitimate purposes will still be illegal. The only thing that will change is that consumers will finally be able to make use of motion pictures on DVD the same way they

\textsuperscript{48} Public Knowledge Comments at 2.
\textsuperscript{49} See id. at 20-21.
make use of musical works on CD – as works they have lawfully acquired and are free to move to whatever personal device is most convenient.

Respectfully submitted

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