

July 16, 2003

Fritz Attaway, Esq.
Executive Vice President and
Washington General Counsel
Motion Picture Association of America
1600 Eye Street, NW
Washington, DC 20006

Dean Marks, Esq.
Senior Counsel, Intellectual Property
AOL Time Warner Inc.
4000 Warner Blvd., Building 156S
Los Angeles, CA 91522

Shira Perlmutter, Esq.
Vice President & Associate
General Counsel, Intellectual
Property Policy
AOL Time Warner
75 Rockefeller Plaza, 24th
Floor
New York, NY, 10019
Bruce H. Turnbull, Esq.
Weil, Gotshal & Menges
1501 K Street, Suite 100
Washington, DC 20005

Steven J. Metalitz, Esq.
Smith & Metalitz LLP
1747 Pennsylvania Ave., NW, Suite 825
Washington, DC 20006

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

Dear Counsel:

Thank you for your responses to our post-hearing questions in the above-referenced rulemaking proceeding. In our review of the record, the hearing testimony and your responses, several additional questions have arisen, primarily relating to region coding of DVDs. We would be grateful to receive your responses to the following questions :

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?
 - A. If that person uses a multizone DVD player in the United States to play that DVD, is that person engaging in a noninfringing 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)?
 - A. Are your responses to questions 1.B. and C. affected by whether the multizone player was manufactured in the US or in a foreign country where 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 be a multizone player? Does it make any difference whether the manufacturer of the DVD player is licensed by DVD-CCA?
- B. 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?
- C. 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)?

- D. Would your responses to questions 1.E. and F. be affected by whether the non-region 1, single-zone player was manufactured in the US 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 a 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?
1. 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.
 2. 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.
 3. It is our understanding that the region on a DVD drive for a computer may be reset up to 5 times.
 - A. Are there authorized DVD players other than DVD drives for computers for which the region may similarly be reset? If not, why not?
 - 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.
 - C. What are the typical costs associated with resetting the region code on a DVD drive for a computer? Please describe how the region is reset.
 1. 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 the motion picture on the DVD, either under section 106 or section 1201(a)(1)? Please explain fully.

Please provide any documentation and/or citations that will support any of the factual assertions you make in answering these questions. With respect to questions that ask for conclusions of law, please state your legal reasoning in detail.

To the extent that your responses to these questions are identical, you are welcome to submit joint responses. We are also sending copies of this letter to Gwen Hinze and Robin Gross in the event that they wish to respond to any of these questions.

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To assist in ensuring that the Register will be able to make her recommendation to the Librarian of Congress in a timely fashion, we would appreciate it if you would submit your responses no later than August 5, 2003.

Sincerely,

David O. Carson
General Counsel

cc: Robin Gross, Esq.
Gwen Hinze, Esq.