



Author Services, Inc.

Representing the literary, theatrical and musical works of L. Ron Hubbard

August 10, 2023

U.S. Copyright Office
James Madison Memorial Building
101 Independence Avenue, S.E.
Washington, DC 20559-6000

**Re: U.S. Copyright Office Notice of Inquiry (NOI)
Exemptions to Permit Circumvention of Access Controls
On Copyrighted Works
Docket No. 2023-5**

Dear Sirs:

Thank you for the opportunity to provide comments. The following comments are made in response to the above referenced Notice of Inquiry.

Specifically, we would like to oppose renewal, in its present form, of 37 C.F.R. 201.40(b)(14), namely, the exemption “Computer programs that are contained in and control the functioning of a lawfully acquired device that is primarily designed for use by consumers, when circumvention is a necessary step to allow the diagnosis, maintenance, or repair of such a device, and is not accomplished for the purpose of gaining access to other copyright works.”

Many consumer devices are sold in the open market to ordinary consumers and are accompanied by unilateral “shrink-wrap” licenses governing the terms of use of the software contained within the device. We have no objection to the exemption as applied to these consumer devices to allow consumers to repair products on their own initiative.

Other devices, however, can only be purchased and used by someone who possess particular qualifications or has been specifically trained in the use of the device. In such cases, the license agreement regarding the use of the software that controls the device, is not a unilateral “shrink-wrap” license, but rather is negotiated and agreed to in advance of the purchase of the device. Such agreements may impose restrictions on transfer and use of the device itself, as well as restrictions on the use of the controlling software. In many case, such restrictions are essential to ensuring the safe and proper use of the device, which is essential for the device manufacture to maintain its reputation and goodwill.

We do not believe that, during the Eight Triennial Proceeding, in which the Copyright Office approved this exemption, the Copyright Office considered this type of device that requires specific training and is sold only following negotiation and execution of a license agreement. Permitting circumvention of TPMs in this category of devices would undermine manufacturers ability to control both their reputation and their software. And, the exemption could be interpreted as voiding certain terms in the license agreements negotiated prior to purchase of such devices.

In this way, the exemption would adversely affect businesses selling the category of devices described above. The exemption might directly contradict the terms of the negotiated, pre-purchase license, undermining the businesses’ ability to control their own reputation and that of their products.

We respectfully submit that this exemption to should be amended to make clear that it does not apply to devices containing computer programs that control their function where: (1) the device may only be purchased by someone who possess particular qualifications and/or has been specifically trained in the use of the device; and (2) the use of such computer programs is governed by a license agreement negotiated and executed prior to purchase of the device.

Specifically, we propose amending the exemption to read as follows:

“Computer programs that are contained in and control the functioning of a lawfully acquired device that is primarily designed for use by consumers, when circumvention is a necessary step to allow the diagnosis, maintenance, or repair of such a device, and is not accomplished for the purpose of gaining access to other copyright works. This exemption shall not apply to devices the purchase of which is restricted either by law or by its supplier to persons that possess particular qualifications and/or has been specifically trained in the use of the device; and (2) the use of such computer programs is governed by a license agreement negotiated and executed prior to purchase of the device.”

If there is any further information that I can provide, please let me know. I can be contacted at the above address and phone number or emailed at ryland@authorservicesinc.com.

Very truly yours,



Ryland Hawkins