

July 22, 2016

David S. Mao
Acting Librarian of Congress
Library of Congress
101 Independence Ave, SE
Washington, DC 20540

Re: FCC Notice of Proposed Rulemaking on Expanding Customers' Video Navigation Choices and Commercial Availability of Navigation Devices

Dear Mr. Mao,

We are intellectual property law scholars with over fifty years of collective experience teaching and writing on issues involving the intersection of copyright and new technologies. Recently, we submitted comments to the Federal Communications Commission regarding the regulation of cable video navigation devices ("set-top boxes"). In our comments, a copy of which is enclosed, we explained in detail why we believe the FCC's proposal does not intrude on any of the exclusive rights guaranteed to copyright holders in Section 106 of the Copyright Act. The assertion that "unlocking the box" would deprive copyright holders of prerogatives the law currently secures for them relies on a misinterpretation of the limited scope of the copyright monopoly.

We understand that the Copyright Office has expressed concern that the FCC's proposal, if implemented, would lead to the infringement of copyright. We do not share that concern, particularly in light of the legal and technical measures contemplated in the NPRM for protecting copyrighted content from illegal copying. We are concerned, however, that the Copyright Office's developing stance in this case is inconsistent with the Supreme Court's clear guidance concerning the limits of the copyright monopoly in relation to the production and sale of equipment that is properly viewed as lying outside the copyright holder's zone of control.

In *Sony v. Universal*, a seminal Supreme Court decision concerning the ability of copyright holders to control the distribution of VCRs, the Court rejected efforts by right holders to extend their intellectual property monopoly into the market for video recording devices that are capable of substantial non-infringing uses. The Court said in *Sony* that it "has always recognized the critical importance of not allowing the [right holder] to extend his monopoly beyond the limits of his specific grant." To allow copyright holders to exert control over the market for video receivers would contravene *Sony*'s crucial limiting principle.

We urge you to oversee the Copyright Office pursuant to Section 701(a) of the Copyright Act to ensure that the Office dispenses advice to policy makers that is reasonably consistent with settled principles of copyright law. When the Office acts to advise Congress on matters within its purview, it must do so in a way that seeks to further the Copyright Act's primary goal of rewarding creators for the public's ultimate benefit. Interpretations of copyright law that operate to expand copyright entitlements into copyright-adjacent fields of commerce run counter to

Supreme Court precedent and the copyright system's goal of increasing public access to knowledge and information.

Sincerely,

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