



Petition for New Exemption Under 17 U.S.C. § 1201

Please submit a separate petition for each proposed exemption.

Note: Use this form if you are seeking to engage in activities not currently permitted by an existing exemption. If you are seeking to engage in activities that are permitted by a current exemption, instead of submitting this form, you may submit a petition to renew that exemption using the form available at <https://www.copyright.gov/1201/2018/renewal-petition.pdf>.

If you are seeking to expand a current exemption, we recommend that you submit both a petition to renew the current exemption, and, separately, a petition for a new exemption using this form that identifies the current exemption, and addresses only those issues relevant to the proposed expansion of that exemption.

ITEM A. PETITIONERS AND CONTACT INFORMATION

Please identify the petitioners and provide a means to contact the petitioners and/or their representatives, if any. The “petitioner” is the individual or entity proposing the exemption.

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Privacy Act Advisory Statement: Required by the Privacy Act of 1974 (P.L. 93-579)

The authority for requesting this information is 17 U.S.C. §§ 1201(a)(1) and 705. Furnishing the requested information is voluntary. The principal use of the requested information is publication on the Copyright Office website and use by Copyright Office staff for purposes of the rulemaking proceeding conducted pursuant to 17 U.S.C. § 1201(a)(1). NOTE: No other advisory statement will be given in connection with this application. Please keep this statement and refer to it if we communicate with you regarding this petition.

ITEM B. DESCRIPTION OF PROPOSED NEW EXEMPTION

Provide a brief statement explaining the nature of the proposed new or expanded exemption. The information that would be most helpful to the Office includes the following, to the extent relevant: (1) the types of copyrighted works that need to be accessed; (2) the physical media or devices on which the works are stored or the services through which the works are accessed; (3) the purposes for which the works need to be accessed; (4) the types of users who want access; and (5) the barriers that currently exist or which are likely to exist in the near future preventing these users from obtaining access to the relevant copyrighted works.

Petitioners need not propose precise regulatory language or fully define the contours of an exemption class. Rather, a short, plain statement describing the nature of the activities the petitioners wish to engage in will be sufficient, as proponents will have the opportunity to further refine or expound upon their initial petitions during later phases of the rulemaking. The Office anticipates that in many cases petitioners will be able to adequately describe in plain terms the relevant information in a few sentences, or even a single sentence, as with the examples below.

Examples:

A proposed exemption for owners of 3D printers to circumvent technological protection measures on firmware or software in 3D printers to run the printers' operating systems to allow use of non-manufacturer-approved feedstock.

A proposed exemption for computer programs in tractors that use lockout codes to prevent farmers from repairing broken tractor parts.

A proposed expansion of the current exemption for motion pictures (including television programs and videos) for uses in documentary films. The expansion sought is to cover lawfully obtained copies of motion pictures contained on Blu-ray discs.

A. Proposed Class

Motion Pictures (including television shows and videos), as defined in 17 U.S.C. 101, where circumvention is undertaken solely in order to make use of short portions of the works for the purpose of criticism or comment, where the motion picture is lawfully made and acquired on a DVD protected by the Content Scrambling System, on a BluRay disc protected by the Advanced Access Control System, via a digital transmission protected by a technological measure, or a similar technological protection measure intended to control access to a work, where the person engaging in circumvention reasonably believes that non-circumventing alternatives are unable to produce the required level of high-quality source material.

B. Introduction

As repeat players in these proceedings, particularly with respect to video excerpt exemptions, EFF, NMR, and OTW notice that a pattern has emerged: a set of proponents submit ideas for exemptions to cover a variety of practical, socially valuable and otherwise lawful activities, a coalition of entertainment entities object – insisting, without evidence, that the proposed exemption might harm the continued growth of video markets – and then, eventually, the Librarian adopts a set of exemptions that are both narrow in concept and often confusing in practice for users and copyright holders alike.

The proposed exemption gives the Copyright Office and the Librarian an opportunity to rethink their unnecessarily complicated approach. With respect to video excerpts in particular, a more streamlined approach will bring us closer to Congress' intent, while making the rules clearer for both users and copyright holders. The proposed class will provide one clear exemption for video excerpts– removing confusion while maintaining critical protections for educators, libraries, professional filmmakers (including documentarians), remix artists, and others.

ITEM B. DESCRIPTION OF PROPOSED NEW EXEMPTION (CONT'D)

C. Background

The legislative history suggests that Congress intended the rulemaking process to be a relatively straightforward means for lawful users to get legal clarity. Thus, for example, when the Copyright Office conducted its first 1201 exemptions rulemaking it suggested that such exemptions should not be based on the type of user or the nature of the uses. Initial exemptions were then rooted in Section 102 categories, and the Office indicated that categories could be clarified by reference to particular media.

In 2006, however, the Register began to define some classes of works by the type of user or use. This approach introduced valuable flexibility but also introduced some unnecessary complexity. In the next two rounds, the ultimate exemptions granted for videos were both complicated and (still) narrow, making them less useful and more difficult to explain and apply with certainty. For example, an attorney seeking to counsel an artist in 2010 regarding using excerpts would have to inquire whether the artists had any commercial support, and assess what qualified as “commercial.” If the user were a student, they would have to consider what qualified as “film and media studies.” This approach may have also led to the multiplication of proponents – every distinct type of user would have to apply, or risk being excluded from the granted exemptions.

In this round, we recommend the Office and the Librarian adjust course and adopt a more streamlined approach to avoid perpetuating ever-increasing complexity of the video excerpt exemption classes. Consideration of type of use makes sense, as it helps bring the exemptions in line with the fair use doctrine in particular as well as other lawful uses. Circumscribing classes by type of user as well, however, introduces needless and unhelpful complication.

D. Requested Information

- (1) *The types of copyrighted works that need to be accessed:* motion pictures
- (2) *The physical media or devices on which the works are stored or the services through which the works are accessed:* DVDs, Blu-Ray discs, Internet streaming services
- (3) *The purposes for which the works need to be accessed:* criticism and comment
- (4) *The types of users who want access:* educators, librarians, filmmakers, documentarians and artists, including videomakers, among many others.
- (5) *The barriers that currently exist or which are likely to exist in the near future preventing these users from obtaining access to the relevant copyrighted works:* CSS, AACS, and other TPMs

With respect to the statutory factors under which the Office will ultimately assess this proposal, we note that much of the evidence and argument (both from current and past proceedings) that the Office reviews in considering renewal or expansion of video excerpt exemptions will apply to this exemption as well.
