



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.

This petition is submitted by Peter Decherney, Professor of Cinema and Media Studies and English at the University of Pennsylvania on behalf of himself and Katherine Sender, Professor of Communication Studies at the University of Michigan; Michael X. Delli Carpini, Professor and Dean, Annenberg School for Communication, University of Pennsylvania; Department of Communication Studies at the University of Michigan. Parties interested in contacting the submitter should contact Peter Decherney at decherney@sas.upenn.edu (215-746-3156) and Katherine Sender at ksender@umich.edu hereinafter known as Educators.

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.

Petitioner submits a proposed modification of the current exemption for motion pictures (including television shows and videos) for use by instructors of *all* online educational courses including those that would not qualify under the current exemption, which is limited to massive open online courses (MOOCs), codified in 37 CFR § 201.40(1)(b)(v) (2015). This modification proposes that the exempted use of motion pictures extend to *all* online educational institutions, and no longer be limited by restrictions drawn from the TEACH Act.

The existing 2015 MOOC exemption was an important step toward increasing access to online education, and it reflected the then current state of online learning. However, online teaching has continued to evolve, and the restriction to MOOCs offered by accredited, non-profit institutions, inhibits the exemption from enabling the current state of the digital revolution of education.

Technology could and should be used to promote access to education since it is increasingly costly and burdensome to attend institutions of higher education. Basic and continuing education is increasingly a pre-requisite for even entry-level employment and career opportunities. The restrictions of the current exemption create a preference for a certain type of novel educational offering —MOOCs— while excluding other legitimate forms of education. There are many institutions, accredited and unaccredited, for-profit and non-profit, that offer valuable online teaching and learning, but do not qualify under the current exemption.

In addition, the stringent requirements transposed from the TEACH Act are neither necessary nor appropriate as restrictions on the use of motion pictures in an online classroom setting because they do not allow for the full breadth of non-infringing uses of copyrighted material. These restrictions are misplaced and hinder opportunities to access education based on fairly used materials. Specifically, the limitation of the exempted use to enrolled students and the requirement that educators of online courses to employ technological protection measures that prevent downstream misuse limit access to course material in places where streaming is not possible. This proposed modification of the current exemption to *all* types of online education for *all* educational institutions unencumbered by the TEACH Act's restrictions will enable opportunities and access to education through technology rather than inhibit it.