

# Notices

Federal Register

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## LIBRARY OF CONGRESS

### Copyright Office

#### 37 CFR Part 201

[Docket No. RM 2005-11]

#### Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Notice of inquiry.

**SUMMARY:** The Copyright Office of the Library of Congress is preparing to conduct proceedings in accordance with section 1201(a)(1) of the Copyright Act, 17 U.S.C. 1201(a)(1), which was added by the Digital Millennium Copyright Act and which provides that the Librarian of Congress may exempt certain classes of works from the prohibition against circumvention of technological measures that control access to copyrighted works. The purpose of this rulemaking proceeding is to determine whether there are particular classes of works as to which users are, or are likely to be, adversely affected in their ability to make noninfringing uses due to the prohibition on circumvention. This notice requests written comments from all interested parties, including representatives of copyright owners, educational institutions, libraries and archives, scholars, researchers and members of the public, in order to elicit evidence on whether noninfringing uses of certain classes of works are, or are likely to be, adversely affected by this prohibition on the circumvention of measures that control access to copyrighted works.

**DATES:** Written comments are due by December 1, 2005. Reply comments are due by February 2, 2006.

**ADDRESSES:** Electronic submissions must be made through the Copyright

Office website: [http://www.copyright.gov/1201/comment\\_forms](http://www.copyright.gov/1201/comment_forms); see section 3 of the SUPPLEMENTARY INFORMATION section for file formats and other information about electronic and non-electronic filing requirements. Addresses for nonelectronic submissions are as follows: If hand delivered by a private party, deliver to Room LM-401 of the James Madison Memorial Building between 8:30 a.m. and 5 p.m. and the envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office, James Madison Memorial Building, Room LM-401, 101 Independence Avenue, SE., Washington, DC 20559-6000. If hand delivered by a commercial courier, any comment must be delivered to the Congressional Courier Acceptance Site located at Second and D Streets, NE., Washington, DC, between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Copyright Office General Counsel, Room LM-403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington DC. If delivered by means of the United States Postal Service (see section 3 of the SUPPLEMENTARY INFORMATION about mail screening and possible delays), address to David O. Carson, General Counsel, Copyright GC/I&R, PO Box 70400, Washington, DC 20024-0400. See SUPPLEMENTARY INFORMATION section for information about requirements and formats of submissions. Comments may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, etc., due to delays in processing receipt of such deliveries.

**FOR FURTHER INFORMATION CONTACT:** Rob Kasunic, Principal Legal Advisor, Office of the General Counsel, Copyright GC/I&R, PO Box 70400, Washington, DC 20024-0400. Telephone (202) 707-8380; telefax (202) 707-8366.

#### SUPPLEMENTARY INFORMATION:

##### 1. Mandate for Rulemaking Proceeding

The Digital Millennium Copyright Act, Pub. L. 105-304 (1998), amended title 17 of the United States Code to add a new Chapter 12, which among other things prohibits circumvention of access control technologies employed by or on behalf of copyright owners to protect their works. Specifically, subsection 1201(a)(1)(A) provides, inter alia, that

“No person shall circumvent a technological measure that effectively controls access to a work protected under this title.”

Subparagraph (B) limits this prohibition. It provides that prohibition against circumvention “shall not apply to persons who are users of a copyrighted work which is in a particular class of works, if such persons are, or are likely to be in the succeeding 3-year period, adversely affected by virtue of such prohibition in their ability to make noninfringing uses of that particular class of works under this title” as determined in this rulemaking. This prohibition on circumvention became effective two years after the date of enactment, on October 28, 2000.

At the end of the 2-year period between the enactment and effective date of the provision, the Librarian of Congress made an initial determination as to classes of works to be exempted from the prohibition for the first triennial period. Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 65 FR 64556, 64564 (2000) (hereinafter Final Reg. 2000). The exemptions promulgated by the Librarian in the first rulemaking remained in effect through October 27, 2003. On October 28, 2003, the Librarian of Congress announced the second determination as to classes of works to be exempted from the prohibition. Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 68 FR 62011, 62013 (2003) (hereinafter Final Reg. 2003). The four exemptions created in the second anticircumvention rulemaking will be in effect through October 27, 2006 and any exemptions promulgated as a result of the third anticircumvention rulemaking will take effect the next day for a 3-year period lasting through October 27, 2009. Both determinations by the Librarian of Congress were made upon the recommendation of the Register of Copyrights following extensive rulemaking proceedings. This notice announces the initiation of the third section 1201 rulemaking required under 17 U.S.C. 1201(a)(1)(C).

##### 2. Background

Title I of the Digital Millennium Copyright Act was, inter alia, the

congressional fulfillment of obligations of the United States under the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. For additional information on the historical background and the legislative history of Title I, see Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 64 FR 66139, 66140 (1999) [<http://www.loc.gov/copyright/fedreg/1999/64fr66139.html>].

Section 1201 of title 17 of the United States Code prohibits two general types of activity: (1) the conduct of "circumvention" of technological protection measures that control access to copyrighted works and (2) trafficking in any technology, product, service, device, component, or part thereof that protects either "access" to a copyrighted work or that protects the "rights of the copyright owner," if that device or service meets one of three conditions. The first type of activity, the conduct of circumvention, is prohibited in section 1201(a)(1). The latter activities, trafficking in devices or services that circumvent "access" or "the rights of the copyright owner" are contained in sections 1201(a)(2) and 1201(b), respectively. In addition to these prohibitions, section 1201 also includes a series of section-specific limitations and exemptions to the prohibitions of section 1201.

#### *The Anticircumvention Provision At Issue*

Subsection 1201(a)(1) applies when a person who is not authorized by the copyright owner to gain access to a work does so by circumventing a technological measure put in place with the authority of the copyright owner to control access to the work. See the Report of the House Committee on Commerce on the Digital Millennium Copyright Act of 1998, H.R. Rep. No. 105-551, pt. 2, at 36 (1998) (hereinafter Commerce Comm. Report).

That section provides that "No person shall circumvent a technological measure that effectively controls access to a work protected under this title." 17 U.S.C. 1201(a)(1)(A) (1998).

The relevant terms are defined:

(3) As used in this subsection—  
(A) to "circumvent a technological measure" means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner; and  
(B) a technological measure "effectively controls access to a work" if the measure, in the ordinary course of its operation, requires the application of

information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work.

17 U.S.C. 1201(a)(3).

#### *Scope of the Rulemaking*

The statutory focus of this rulemaking is limited to one subsection of section 1201: the prohibition on the conduct of circumvention of technological measures that control access to copyrighted works. 17 U.S.C. 1201(a)(1)(C) [<http://www.copyright.gov/title17/92chap12.html#1201>]. The Librarian of Congress has no authority to limit either of the anti-trafficking provisions contained in subsections 1201(a)(2) or 1201(b). 17 U.S.C. 1201(a)(1)(E).

Moreover, for a proposed exemption to be considered in this rulemaking, there must be a causal connection between the prohibition in 1201(a)(1) and the adverse effect on noninfringing uses.

This rulemaking addresses only the prohibition on the conduct of circumventing measures that control "access" to copyrighted works, e.g., prohibiting unauthorized decryption of an encrypted work or bypassing passwords used to restrict access to copyrighted works. The structure of section 1201 is such that there exists no comparable prohibition on the conduct of circumventing technological measures that protect the "rights of the copyright owner" in 1201(b), e.g., the section 106 rights to reproduce, adapt, distribute, publicly perform, or publicly display a work. Circumventing a technological measure that protects these section 106 rights of the copyright owner is governed not by section 1201, but rather by the traditional copyright rights and the applicable limitations in the Copyright Act. For example, if a person circumvents a measure that prohibits printing or saving an electronic copy of an article, there is no provision in section 1201 that precludes this activity. Instead, it would be actionable as copyright infringement of the section 106 right of reproduction unless an applicable limitation applied, e.g., fair use. Since section 1201 contains no prohibition on the circumvention of technological measures that protect the "rights of the copyright owner," sometimes referred to as "use" or "copy" control measures, any effect these measures may have on noninfringing uses would not be attributable to a section 1201 prohibition.

On the other hand, because there is a prohibition on the act of circumventing a technological measure that controls access to a work, and since traditional Copyright Act limitations are not

defenses to the act of circumventing a technological measure that controls access, Congress chose to create the current rulemaking proceeding as a "fail-safe mechanism" to monitor the effect of the anticircumvention provision in 1201(a)(1)(A). Commerce Comm. Report, at 36. This anticircumvention rulemaking is authorized to monitor the effect of the prohibition on "access" circumvention on noninfringing uses of copyrighted works. In this triennial rulemaking proceeding, effects on noninfringing uses that are unrelated to section 1201(a)(1)(A) may not be considered. 17 U.S.C. 1201(a)(1)(C).

#### *Burden of Proof*

In the first rulemaking, the Register concluded from the language of the statute and the legislative history that a determination to exempt a class of works from the prohibition on circumvention must be based on a showing that the prohibition has or is likely to have a substantial adverse effect on noninfringing uses of a particular class of works. It was determined that proponents of an exemption bear the burden of proof that an exemption is warranted for a particular class of works and that the prohibition is presumed to apply to all classes of works unless an adverse impact has been shown. See Commerce Comm. Report, at 37 and see also, Final Reg. 2000, at 64558.

Some have objected to the Register's use of a standard that requires a showing of a "substantial" adverse effect on noninfringing uses, and have asserted that the Register has increased the evidentiary standard higher than the statutory requirement. In the most recent rulemaking in 2003, the Register addressed this criticism and found it to be misplaced, noting that Use of the term "substantial" does not impose a "heightened" requirement; it imposes the requirement found throughout the legislative history, which is variously stated as "substantial adverse impact," "distinct, verifiable, and measurable impacts," and more than "de minimis impacts." As is apparent from the dictionary definition of "substantial," and the Supreme Court's treatment of the term (e.g., in its articulation of the substantial evidence rule), requiring that one's proof be "substantial" simply means that it must have substance.

Final Reg. 2003, at 62013.

Whatever label one uses, proponents of an exemption bear the burden of providing sufficient evidence under the foregoing standards to support an exemption. How much evidence is sufficient will vary with the factual context of the alleged harm. Further,

proof of harm is never the only consideration in the rulemaking process, and therefore the sufficiency of the harm will always be relative to other considerations, such as, the availability of the affected works for use, the availability of the works for nonprofit archival, preservation, and educational purposes, the impact that the prohibition has on criticism, comment, news reporting, teaching, scholarship, or research, the effect of circumvention on the market for or value of copyrighted works, and any other relevant factors.

In order to meet the burden of proof, proponents of an exemption must provide evidence either that actual harm exists or that it is "likely" to occur in the ensuing 3-year period. Actual instances of verifiable problems occurring in the marketplace are generally necessary in order to prove actual harm. The most compelling cases of actual harm will be based on first-hand knowledge of such problems. Circumstantial evidence may also support a claim of present or likely harm, but such evidence must also reasonably demonstrate that a measure protecting access was the cause of the harm and that the adversely affected use was, in fact, noninfringing. "Likely" adverse effects may also support an exemption. This standard of "likelihood" requires proof that adverse effects are more likely than not to occur. Claims based on "likely" adverse effects cannot be supported by speculation alone. The House Manager's Report stated that an exemption based on "likely" future adverse impacts during the applicable period should only be made "in extraordinary circumstances in which the evidence of likelihood is highly specific, strong and persuasive." Staff of House Committee on the Judiciary, 105th Cong., Section-By-Section Analysis of H.R. 2281 as Passed by the United States House of Representatives on August 4, 1998, (hereinafter House Manager's Report), at 6. This statement could be interpreted as raising the burden beyond a standard of a preponderance of the evidence. The statutory language enacted, however, – "whether persons who are users of a copyrighted work are, or are likely to be in the succeeding 3-year period, adversely affected by the prohibition" – does not specify a standard beyond mere likelihood and thus the preponderance standard will be applied by the Register. Nevertheless, as the Register's final recommendation of 2000 explained, the expectation of "distinct, verifiable and measurable impacts" in the legislative history as to actual harm

suggests that conjecture alone would be insufficient to support a finding of "likely" adverse effect. Final Reg. 2000, at 64559. Although a showing of "likely" adverse impact will necessarily involve prediction, the burden of proving that the expected adverse effect is more likely than other possible outcomes rests firmly on the proponent of the exemption.

The identification of existing or likely problems is not, however, the end of the analysis. In order for an exemption of a particular class of works to be warranted, a proponent must show that such problems warrant an exemption in light of all of the relevant facts. The identification of isolated or anecdotal problems will be generally insufficient to warrant an exemption of a class of works. Similarly, the mere fact that the digital format would be more convenient to use for noninfringing purposes is generally insufficient factual support for an exemption. Further, purely theoretical critiques of Section 1201 will never satisfy the requisite showing. House Manager's Report, at 6. Proponents of exemptions must show sufficient harm to warrant an exemption from the default rule established by Congress – the prohibition in circumvention.

There is a presumption that the § 1201 prohibition will apply to any and all classes of works, including previously exempted classes, unless a new showing is made that an exemption is warranted. Final Reg. 2000, at 64558. Exemptions are reviewed de novo and prior exemptions will expire unless sufficient new evidence is presented in each rulemaking that the prohibition has or is likely to have an adverse effect on noninfringing uses. The facts and argument that supported an exemption during any given 3-year period may be insufficient within the context of the marketplace in a different 3-year period. Similarly, proposals that were not found to warrant an exemption in any particular rulemaking could find factual support in the context of another rulemaking.

#### *Availability of Works in Unprotected Formats*

Other statutory considerations must also be balanced with evidence of adverse effects attributable to the prohibition. In making her recommendation to the Librarian, the Register is instructed to consider the availability for use of copyrighted works. 17 U.S.C. 1201(a)(1)(C)(i). This inquiry demands that the Register consider whether "works" protected by technological measures that control access are also available in the

marketplace in formats that are unprotected. The fact that a "work" (in contrast to a particular "copy" of a work) is available in a format without technological protection measures may be significant because the unprotected formats might allow the public to make noninfringing uses of the work even though other formats of the work would not. For example, in the first rulemaking, many users claimed that the technological measures on motion pictures contained on Digital Versatile Disks (DVDs) restricted noninfringing uses of the motion pictures. A balancing consideration was that the record revealed that at that time, the vast majority of these works were also available in analog format on VHS tapes. Final Reg. 2000, at 64568. Thus, the full range of availability of a work for use is necessary to consider in assessing the need for an exemption to the prohibition on circumvention.

Another consideration relating to the availability for use of copyrighted works is whether the measure supports a distribution model that benefits the public generally. For example, while a measure may limit the length of time that a work may be accessed (time-limited) or may limit the scope of access (scope-limited), e.g., access to only a portion of work, those limitations may benefit the public by providing "use-facilitating" models that allow users to obtain access to works at a lower cost than they would otherwise be able to obtain were such restrictions not in place. If there is sufficient evidence that particular classes of works would not be offered at all without the protection afforded by technological protection measures that control access, this evidence must be considered. House Manager's Report, at 6. Accord, Final Reg. 2000, at 64559. Thus, the Register's inquiry must assess any benefits to the public resulting from the prohibition as well as the adverse effects that may be established.

#### *The Scope of the Term "Class of Works"*

Section 1201 does not define a critical term for the rulemaking process: "class of works." In the first rulemaking, the Register elicited views on the scope and meaning of this term. After review of the statutory language, the legislative history and the extensive record in the proceeding [see Final Reg. 2000, at 64557 for a description of the record in the 2000 rulemaking proceeding], the Register reached certain conclusions on the scope of this term and requested further congressional guidance. [For a more detailed discussion, see Final Reg. 2000, at 64559.]

The Register found that the statutory language required that the Librarian identify "classes of works" based upon attributes of the works themselves, and not by reference to some external criteria such as the intended use or users of the works. The phrase "class of works" connotes that the shared, common attributes of the "class" relate to the nature of authorship in the "works." Thus, a "class of works" was intended to be a "narrow and focused subset of the broad categories of works of authorship \* \* \* identified in section 102." Commerce Comm. Report, at 38. The starting point for a proposed exemption of a particular class of works must be the section 102 categories of authorship: literary works; musical works; dramatic works; pantomimes and choreographic works; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; and architectural works.

This determination is supported by the House Manager's Report, which discussed the importance of appropriately defining the proper scope of the exemption. House Manager's Report, at 7. The legislative history stated that it would be highly unlikely for all literary works to be adversely affected by the prohibition and therefore, determining an appropriate subcategory of the works in this category would be the goal of the rulemaking. *Id.*

The Register concluded that the starting point for identifying a particular "class of works" to be exempted must be one of the section 102 categories. Final Reg. 2000, at 64559-64561. From that starting point, it is likely that the scope or boundaries of a particular class would need to be further limited to remedy the particular harm to noninfringing uses identified in the rulemaking.

As a result of the Register's recommendation in 2003, the Librarian of Congress decided that four classes of works should be exempted:

- 1) Compilations consisting of lists of Internet locations blocked by commercially marketed filtering software applications that are intended to prevent access to domains, websites or portions of websites, but not including lists of Internet locations blocked by software applications that operate exclusively to protect against damage to a computer or a computer network or lists of Internet locations blocked by software applications that operate exclusively to prevent receipt of email.
- 2) Computer programs protected by dongles that prevent access due to malfunction or damage and which are obsolete.
- 3) Computer programs and video games distributed in formats that have become

obsolete and which require the original media or hardware as a condition of access. A format shall be considered obsolete if the machine or system necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.

- 4) Literary works distributed in ebook format when all existing ebook editions of the work (including digital text editions made available by authorized entities) contain access controls that prevent the enabling of the ebook's read-aloud function and that prevent the enabling of screen readers to render the text into a specialized format.

Commenters should familiarize themselves with the Register's recommendation in the prior rulemaking proceedings, since many of the issues addressed may provide guidance for current showings either for or against an exemption.

This notice requests written comments from all interested parties. In addition to the necessary showing discussed above, in order to make a prima facie case for a proposed exemption, at least three critical points should be established.

First, a proponent must attempt to identify the specific technological measure that is the causal source of the alleged problem, and show why that technological measure "effectively controls access to a [copyrighted] work."

Second, a proponent must specifically explain what noninfringing activity the prohibition is adversely affecting.

Third, a proponent must establish that the prevented activity is, in fact, a noninfringing use under current law.

The nature of the Librarian's inquiry is further delineated by the statutory areas to be examined:

- (i) the availability for use of copyrighted works;
- (ii) the availability for use of works for nonprofit archival, preservation, and educational purposes;
- (iii) the impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research;
- (iv) the effect of circumvention of technological measures on the market for or value of copyrighted works; and
- (v) such other factors as the Librarian considers appropriate.

17 U.S.C. 1201(a)(1)(C).

These statutory considerations require examination and careful balancing. The harm identified by a proponent of an exemption must be balanced against the harm that would result from an exemption. In certain circumstances, an exemption could have a greater adverse effect on the public than would the adverse effects on noninfringing uses identified. The ultimate determination

of the Librarian must take all of these factors into consideration. Therefore, a commenter's analysis should also address these considerations.

For the entire record of the two previous anticircumvention rulemakings, including all comments, testimony and notices published, see the Copyright Office's website at: <http://www.loc.gov/copyright/1201/>.

### 3. Written Comments

In the first rulemaking, the Register determined that the burden of proof is on the proponent of an exemption to come forward with evidence supporting an exemption for a particular class of works. In this third triennial rulemaking, the Register shall continue with the procedure adopted in the second rulemaking: Comments submitted in the initial comment period should be confined to proposals for exempted classes. They should specifically identify particular classes of works adversely affected by the prohibition and provide evidentiary support for the need for the proposed exemptions.

For each particular class of works that a commenter proposes for exemption, the commenter should first identify that class, followed by a summary of the argument in favor of exempting that proposed class. The commenter should then specify the facts and evidence providing a basis for this exemption. Finally, the commenter should state any legal arguments in support of the exemption. This format of class/summary/facts/argument should be sequentially followed for each class of work proposed as necessary.

As discussed above, the best evidence in support of an exemption would consist of concrete examples or specific instances in which the prohibition on circumvention of technological measures protecting access has had or is likely to have an adverse effect on noninfringing uses. It would also be useful for the commenter to quantify the adverse effects in order to explain the scope of the present or likely problem.

In the reply comments, persons who oppose or support any exemptions proposed in the initial comments will have the opportunity to respond to the proposals made in the initial comments and to provide factual information and legal argument addressing whether or not a proposed exemption should be adopted. Since the reply comments are intended to be responsive to the initial comments, reply commenters must identify which proposal(s) they are responding to, whether in opposition, support, amplification or correction. As with initial comments, reply comments

should first identify the proposed class to which the reply is responsive, provide a summary of the argument, and then provide the factual and/or legal support for their argument. This format of class/summary/facts and/or legal argument should be repeated for each reply to a particular class of work proposed.

The Copyright Office intends to place the comments and reply comments that are submitted in this proceeding on its public website (<http://www.copyright.gov/1201>).<sup>1</sup> Regardless of the mode of submission, all comments must, at a minimum, contain the legal name of the submitter and the entity, if any, on whose behalf the comment was submitted. If persons do not wish to have their address, telephone number, or email address publicly displayed on the Office's website, comments should not include such information on the document itself but should only include the legal name of the commenter. The Office prefers that comments and reply comments be submitted in electronic form. However, the Office recognizes that persons may be unable to submit their comments through the Office's website or to deliver their comments in person. Therefore, comments may also be delivered through the United States Postal Service, addressed to the General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024-0400. Due to mail screening on Capitol Hill and possible delays in delivery, submission by means of the United States Postal Service is discouraged and there is a risk that the comment will not be received at the Copyright Office in time to be considered. Electronic filing or hand-delivery will help insure timely receipt of comments by the Office. Electronic comments successfully submitted through the Office's website will generate a confirmation receipt to the submitter and submitters hand-delivering comments may request a date stamp on an extra copy provided by the submitter.

#### *Submission of Comments*

Comments may be submitted in the following ways: *If submitted through the Copyright Office's website:* The Copyright Office's website will contain a submission page at: [http://www.copyright.gov/1201/comment\\_forms](http://www.copyright.gov/1201/comment_forms). Approximately thirty days prior to each applicable deadline

<sup>1</sup> If a comment includes attached material that appears to be protected by copyright and there is no indication that the material was attached with permission of the copyright owner, the attached material will not be placed on the Office's website.

(see DATES), the form page will be activated on the Copyright Office website allowing information to be entered into the required fields, including the name of the person making the submission, mailing address, telephone number, and email address. There will also be non-required fields for, e.g., the commenter's title, the organization that the commenter is representing, whether the commenter is likely to request to testify at public hearings and if so, whether the commenter is likely to prefer to testify in Washington, DC or a location in California. For initial comments, there will be two additional fields required: 1) the proposed class or classes of copyrighted work(s) to be exempted, and 2) a brief summary of the argument(s). For reply comments, there will be two similar required fields: 1) the class or classes to which the reply is responsive, including the initial comment numbers, and 2) a brief summary of the argument.

The comment or reply comment itself must be sent as an attachment, and must be in a single file in either Adobe Portable Document File (PDF) format (preferred), Microsoft Word Version 2003 or earlier, WordPerfect 9.0 or earlier, Rich Text Format (RTF), or ASCII text file format. There will be a browse button on the form that will allow submitters to attach the comment file to the form and then to submit the completed form to the Office. The personal information entered into the required fields on the form page will not be publicly posted on the Copyright Office website, but the Office intends to post on its website the proposed class and the summary of the argument, as well as the entire, attached comment document. Only the commenter's name is required on the comment document itself and a commenter who does not want other personal information posted on the Office's website should avoid including other private information on the comment itself. Except in exceptional circumstances, changes to the submitted comment will not be allowed and it will become a part of the permanent public record of this rulemaking.

*If by means of the United States Postal Service or hand delivery:* Send, to the appropriate address listed above, two copies, each on a 3.5-inch write-protected diskette or CD-ROM, labeled with the legal name of the person making the submission and the entity on whose behalf the comment was submitted, if any. The document itself must be in a single file in either Adobe Portable Document File (PDF) format (preferred), Microsoft Word Version

2003 or earlier, WordPerfect Version 9 or earlier, Rich Text Format (RTF), or ASCII text file document. If the comment is hand delivered or mailed to the Office and the submitter does not wish to have the address, telephone number, or email address publicly displayed on the Office's website, the comment should not include such information on the document itself, but only the name and affiliation, if any, of the commenter. In that case, a cover letter should be included with the comment that contains the commenter's address, phone number, email address, and for initial comments, the proposed class of copyrighted work to be exempted and a brief summary of the argument.

Anyone who is unable to submit a comment in electronic form (on the website as an attachment or by means of the United States Postal Service or hand delivery on disk or CD-ROM) should submit an original and fifteen paper copies by hand or by means of the United States Postal Service to the appropriate address listed above. It may not be feasible for the Office to place these comments on its website.

*General Requirements for all submissions:* All submissions (in either electronic or non-electronic form delivered through the website, by means of the United States Postal Service by hand-delivery or by courier) must contain on the comment itself, the name of the person making the submission and his or her title and affiliation, if the comment is being submitted on behalf of that organization. The mailing address, telephone number, telefax number, if any, and email address need not be included on the comment itself, but must be included in some form, e.g., on the website form or in a cover letter with the submission. All submissions must also include the class/summary/factual and/or legal argument format in the comment itself for each class of work proposed or for each reply to a proposal.

Initial comments and reply comments will be accepted for a 30-day period in each round, and a form will be placed on the Copyright Office website at least 30 days prior to the deadline for submission. Initial comments will be accepted from November 2, 2005 until December 1, 2005, at 5:00 P.M. Eastern Standard Time, at which time the submission form will be removed from the website. Reply comments will be accepted from January 4, 2006 until February 2, 2006, at 5:00 P.M. Eastern Standard Time.

#### 4. Hearings and Further Comments

The Register also plans on holding public hearings in the Spring after receipt of the comments and reply comments. The tentative dates for the Washington, DC hearings are currently March 29 and 31, 2006, and April 3 and 4, 2006, and the hearings most likely will take place in the James Madison Memorial Building of the Library of Congress in Washington, DC. The dates and location of hearings for the West Coast have yet to be decided. A separate notice for details on all hearings in this rulemaking proceeding will be published at a later time in the Federal Register and on the Copyright Office's website. In order to assist the Copyright Office in identifying the number of days for hearings, the comment and reply comment form page will contain non-

required fields asking whether the commenter is likely to request to testify and if so, in which location. Formal requests to testify will be solicited early in 2006.

To provide sufficient flexibility in this proceeding, in the event that unforeseen developments occur that would significantly affect the Register's recommendation, an opportunity to petition the Register for consideration of new information will be made available after the deadlines specified. A petition, including proposed new classes of works to be exempted, must be in writing and must set forth the reasons why the information could not have been made available earlier and why it should be considered by the Register after the deadline. A petition must also be accompanied by fifteen copies of any

new proposed exemption that includes the proposed class of works to be exempted, a summary of the argument, the factual basis for such an exemption and the legal argument supporting such an exemption. These materials must be delivered to the Copyright Office at the address listed above. The Register will make a determination whether to accept such a petition based on the stage of the rulemaking process at which the request is made and the merits of the petition. If a petition is accepted, the Register will announce deadlines for comments in response to the petition.

Dated: September 27, 2005

**Marybeth Peters,**

*Register of Copyrights.*

[FR Doc. 02-????? Filed ??-??-02; 8:45 am]

**BILLING CODE 1410-33-S**