

## Long Reply Comment Regarding a Proposed Exemption Under 17 U.S.C. 1201

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### Item 1. Commenter Information

This proposal is respectfully submitted by Michael Weinberg in his personal capacity.

### Item 2. Proposed Class Addressed

This comment addresses Proposed Class 26: Software – 3D Printers

### Item 3. Reply

In defending the practice of leveraging copyright law to limit customer choice in 3D printer material, opponents argue that limiting customer choice helps support development of new 3D printing material.<sup>1</sup> Opponents argue that limiting consumer choice helps support servicing and maintaining printers.<sup>2</sup> Opponents argue that limiting consumer choice helps keep printer prices down.<sup>3</sup> Opponents argue that limiting consumer choice helps with print precision.<sup>4</sup> Opponents argue that limiting consumer choice helps to monitor the status of prints and of printing materials.<sup>5</sup> Opponents argue that limiting consumer choice helps avoid fire hazards and leads to an increase in positive health outcomes.<sup>6</sup>

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<sup>1</sup> See Comments of the Intellectual Property Owners Association, *In the Matter of Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies*, Docket No. RM 2014-07, (Mar. 27, 2015) [“**IPO Comment**”] at 4; see also Comments of Stratasys, Ltd., *In the Matter of Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies*, Docket No. RM 2014-07, (Mar. 27, 2015) [“**Stratasys Comment**”] at 5-6.

<sup>2</sup> See Stratasys Comment at 28.

<sup>3</sup> See IPO Comment at 4; Jonathan B. Baker, *3D Printing Technological Protection Measures: Consequences for Innovation and Consumer Welfare*, Compass Lexecon (Mar. 27, 2015) [“**Baker Report**”].

<sup>4</sup> See IPO Comment at 3, Stratasys Comment at 10, 25, 28.

<sup>5</sup> See Stratasys Comment at 28.

<sup>6</sup> *Id.* at 11, 29.

I find many of these claims suspect. However, they do not matter. None of them have anything to do with copyright law. As such, for the purposes of this proceeding, I do not question any of these claims.

### **Opponents' Concerns are Unrelated to Copyright**

Simply put, these purported benefits are irrelevant to the matter at hand. As opponents' comments make clear, their concern rest primarily with two things: 3D printers and 3D printing material. Both 3D printers and 3D printing material require a great deal of resources to develop, market, and distribute. But neither 3D printers nor 3D printing material fall within the scope of copyright protection.<sup>7</sup> The weight of the opposition comments make clear that opponents merely see copyright as a convenient way to protect business models as far from the scope of copyright protection as is possible in the computer age.

Opponent Stratasys is largely correct that “[f]ar from seeking noninfringing access to copyrighted work, Petitioners seek to open certain 3D printing systems to third-party materials,”<sup>8</sup> although this claim is slightly too broad. In this proceeding, petitioners are merely seeing to clarify that Section 1201 does not prevent users of 3D printers from choosing to use third-party materials.

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<sup>7</sup> 17 U.S.C. § 101 “‘Pictorial, graphic, and sculptural works’ . . . shall include works of artistic **craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned.**” (emphasis added).

<sup>8</sup> Stratasys Comments at 30.

Opponents spend a number of pages talking about the importance of materials and functional aspects of printers, and the technical challenges of developing both with precision. Opponent Stratasy's even commissioned a study purporting to show that it is actually helping consumers by limiting choices available to them.<sup>9</sup> But the subject of the study – 3D printer materials – simply serves to highlight the distance that the core concern of the opponents sits from copyright protection. While 3D printer materials may be technically complex and important to precision printing, protecting them and encouraging their creation has nothing to do with copyright law.

### **The Proposed Exemption Has Nothing to do with Distributing 3D Design Files**

While the overwhelming majority of opposition filings dwell on concerns far afield from copyright, opponents do make brief allusions to a concern potentially related to copyright law. Both raise hypothetical systems for securely distributing 3D design files protected by copyright, and suggest that allowing consumers to choose their own 3D printing materials would somehow negatively impact these imagined future platforms.<sup>10</sup>

However, opponents fail to provide any evidence that any implementation of this exemption would impact such a secure distribution platform. Furthermore, opponents fail to provide any evidence that such a platform would be or would need to be related to a system designed to limit the use of 3D printer material. To the extent that these platforms exist today, opponents are unable to link consumer choice in materials to their

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<sup>9</sup> Baker Report.

<sup>10</sup> See IPO Comment at 4; Stratasy's Comment at 12.

circumvention. To the extent that they might evolve in the future, opponents are unable to suggest why consumer material choice would undermine them.

Furthermore, circumventing technical protection measures designed to secure the distribution of digital files falls outside of the scope of the proposed exemption. To the extent that such circumvention would violate Section 1201, this exemption would not impact that status.

### **Copyright Law Should Not Be Used as a Pretext to Limit Consumer Choice in Non-Copyright Areas**

The proposed exemption may make printers less precise, less safe, and cause users to void countless warranties. Opponent Stratays may be correct that “there are several reasons that this [exemption] would be bad for both manufacturers and 3D printing consumers.”<sup>11</sup>

None of that should be relevant to this proceeding. The choice of materials used in a printer is not the manufacturers’ to make. Nothing in this proceeding prevents a manufacturer from refusing to service printers that make use of third party materials, or forces it to make every printer physical compatible with any conceivable material.

This exemption is about printer operators, not printer manufacturers. Printer operators should be free to choose which materials to use in their printers, and to evaluate the consequences of doing so. Opponents’ inability to conceive of a reason why anyone

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<sup>11</sup> See Stratays Comment at 30.

would want to use third party material should not act as a bar against users with more creativity, or different priorities, from doing so.

## **Conclusion**

Opponents' willingness to devote countless billable hours in opposition to this request vividly highlights the necessity of this exemption. Such robust opposition makes it clear that anyone attempting to use unapproved material in a 3D printer equipped with a digital verification system does so at the risk of a lawsuit. Regardless of the ultimate merits of such a suit, its threat acts as a barrier to consumers exercising their reasonable rights to use third party material in their machines.

This proceeding gives the Registrar the opportunity to lift the cloud around this issue. I urge the Registrar to act decisively in granting this request and to clarify that copyright does not act as a universal bar to activities looked down upon by manufacturers.

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Michael Weinberg

May 1, 2015