

July 13, 2021

Mark Gray and Rachel Counts
U.S. Copyright Office, Library of Congress

via e-mail to mgray@copyright.gov and rcounts@copyright.gov

Re: Docket No. 2020-11
Exemptions to Prohibition Against Circumvention of Technological
Measures Protecting Copyrighted Works

Dear Mr. Gray and Ms. Counts:

On July 9, 2021, Clark Rachfal of the American Council of the Blind (ACB), Jack Bernard of the University of Michigan,¹ Jonathan Band, counsel to the Library Copyright Alliance, and Dakotah Hamilton and Blake Reid of the Samuelson-Glushko Technology Law and Policy Clinic at Colorado Law, counsel to ACB, met with Kevin Amer and Mr. Gray to discuss the proposed Class 8 and Class 17 exemptions in the above-referenced proceeding.

Regarding Class 8, we discussed the language proposed in the joint response² to questions posed in the Office's post-hearing letter.³ We explained that a consensus had been reached on subsection (iv) and urged the Office to adopt the proposed exemption with the language included in the letter. We also reiterated our request that the Office address the interaction between Section 1201 and Section 121A.⁴

¹ Affiliation listed for identification purposes only.

² Letter from Blake E. Reid, et al. to Regan A. Smith and Anna Chauvet at 2 (May 14, 2021) ("Joint Response Letter"), <https://www.copyright.gov/1201/2021/post-hearing/letters/Class-8-Joint-Post-Hearing-Response.pdf>.

³ Letter from Regan A. Smith to Jonathan Band, et al., (April 16, 2021), <https://www.copyright.gov/1201/2021/post-hearing/letters/Class-8-Post-Hearing-Letter-04.16.2021.pdf>.

⁴ See Reply Comments of ACB, et al. at 6 (Mar. 10, 2021), [https://www.copyright.gov/1201/2021/comments/reply/Class%208 Reply Accessibility%20Petitioners%20III.pdf](https://www.copyright.gov/1201/2021/comments/reply/Class%208%20Reply%20Accessibility%20Petitioners%20III.pdf). We also underscored that regardless of how the Office addresses the interaction between Section 1201 and Section 121A, the Office must formulate the final exemption language to maintain, consistent with the existing exemption, that the personal use prong, *see* 37 C.F.R. § 201.40(b)(3)(i), and the authorized entity prong, *see* 37 C.F.R. §

Regarding Class 17, we urged the Office to adopt the exemption as proposed. We discussed the well-established importance of facilitating equitable access to copyrighted works for people with disabilities, consistent with the goals of both Title 17 and federal disability law. We also discussed the prolific digital market for digital copyrighted works that has unfurled over the past two decades notwithstanding the presence of accessibility-related exemptions to Section 1201 and noted the implausibility of rightsholders' concerns over an exemption to the anti-circumvention measures focused on accessibility uses.

We emphasized that the record contains numerous and detailed examples of specific remediative activities⁵ across a wide range of disabilities and copyrighted works that are more than sufficient to satisfy the legal threshold for recommending the proposed exemption. We underscored that Section 1201 vests the Office with the necessary authority to grant an exemption that covers remediative uses across either all digital copyrighted works encumbered with TPMs,⁶ or alternatively, remediative uses across the range of specific categories of works described in Section 102(a).⁷ Because the proposed exemption is meant to address the needs of many possible disabilities and technologies, defining the class in terms of the goal of the circumvention—remediation of works to make them accessible—is an appropriate specification of the class for the purposes of Section 1201.

Please don't hesitate to contact us if you have any questions.

201.40(b)(3)(ii), are distinct and separate from each other by inserting an “or” at the appropriate place in the final exemption language. *Compare, e.g.*, 37 C.F.R. § 201.40(b)(3) (using “or” between the personal use and authorized entity subsections) *with* Joint Response Letter at 2 (using “or” between the authorized entity and import/export subsections).

⁵ Post-Hearing Response of ACB, et al. at 6-21 (June 4, 2021), <https://www.copyright.gov/1201/2021/post-hearing/letters/Class%2017%20Accessibility%20Petitioners%20Post-Hearing%20Response%20to%20Office%20final.pdf>.

⁶ Long Comment of ACB, et al. at 27-33 (Dec. 14, 2020), <https://www.copyright.gov/1201/2021/comments/Class%2017%20InitialComments%20Accessibility%20Petitioners%20III.pdf>.

⁷ *See* 17 U.S.C. § 102(a).

Respectfully submitted,

/s/

Blake E. Reid⁸

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⁸ This filing was drafted with the substantial assistance of Dakotah Hamilton.