



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

8th Triennial Rulemaking

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/1201/2021/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.

American Council of the Blind
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Represented by:
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(petitioner list continues under Item B)

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.

Petitioners and Contact Information (cont'd)

American Foundation for the Blind
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National Federation of the Blind
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Library Copyright Alliance
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American Association of Law Libraries
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Benetech/Bookshare
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HathiTrust
Mike Furlough, Executive Director
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The American Council of the Blind (ACB) is a national grassroots consumer organization representing Americans who are blind and visually impaired. With 70 affiliates, ACB strives to increase the independence, security, equality of opportunity, and to improve quality of life for all blind and visually impaired people.

The American Foundation for the Blind (AFB) works to create a world of no limits for people who are blind or visually impaired by mobilizing leaders, advancing understanding, and championing impactful policies and practices using research and data.

Since 1940, the National Federation of the Blind has advocated for equality of opportunity for the nation's blind, and as part of that mission, the Federation has vigorously stood for equal access to information through its leadership in many ways including leading efforts to secure passage of the Chafee Amendment to the Copyright Act and adoption of the Marrakesh Treaty and its intervention as a party in the HathiTrust case.

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

Petitioners and Contact Information (cont'd)

The Library Copyright Alliance (LCA) consists of three major library associations—the American Library Association (ALA), the Association of College and Research Libraries (ACRL), and the Association of Research Libraries (ARL)—that collectively represent over 100,000 libraries in the United States. Libraries provide services to visually impaired people, both inside and outside of educational settings, in particular by converting works into formats accessible to the print disabled.

The American Association of Law Libraries (AALL) advances the profession of law librarianship and legal information and supports the professional growth of its members through leadership and advocacy in the field of legal information and information policy. On behalf of its 4,000 members, AALL promotes equitable and permanent public access to trustworthy legal information, continuous improvement in access to justice, and the essential role of law librarians and legal information professionals within their organizations and within their community to make the whole legal system stronger.

Bookshare is an ebook library that makes reading easier. People with dyslexia, blindness, cerebral palsy, and other reading barriers can read in ways that work for them with ebooks in audio, audio + highlighted text, braille, and other customizable formats.

HathiTrust's Digital Library contains over 17 million books digitized from academic libraries. Through its Accessible Text Request Service, print disabled users in higher education institutions in the US and in Marrakesh Treaty nations may obtain DRM-free digital access to the text of any item in this collection, consistent with Section 121 of the Copyright Act.

Description of Proposed New Exemption

In addition to recommending and granting the proposed renewal of the long-standing exemption concerning literary works distributed electronically (i.e., e-books) for use with assistive technologies for persons who are blind, visually impaired, or have print disabilities, the Copyright Office should recommend, and the Librarian should grant, updating to the wording and scope of the exemption to track changes to the Chafee Amendment made under the Marrakesh Treaty Implementation Act.

Historically, the e-book accessibility exemption has tracked the wording and scope of the Chafee Amendment, codified at 17 U.S.C. 121. In 2019, the United States deposited its instrument of ratification to join The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (the "Marrakesh Treaty").

In joining the Marrakesh Treaty, the United States committed to updating its copyright laws and regulations to be consistent with the mandates of the treaty, and in service of that commitment updated the Chafee Amendment with the Marrakesh Treaty Implementation Act. Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, World Intellectual Property Organization (2013). As a result, the Chafee Amendment underwent several changes and an entirely new sister section of law was established, 17 U.S.C. § 121A.

The Office should amend the exemption to bring it up to date with the scope of the current version of Chafee and related Section 121A and into compliance with Article 7 of the Marrakesh Treaty, which requires all parties to "take appropriate measures, as necessary, to ensure that when they provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures, this legal protection does not prevent beneficiary persons from enjoying the limitations and exceptions provided for in this Treaty." Marrakesh Treaty art. 7. Doing so is necessary to ensure that the U.S. comes fully into compliance with its commitments under the Treaty.

For the Office's convenience, we have outlined what we understand to be the necessary changes below, but look forward to engaging in the specifics with the Office over the course of the rulemaking:

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

I. Updating the exemption beneficiary terminology in 37 C.F.R. § 201.40(b)(3)(i) from “blind or other person with a disability” to “eligible person, as such a person is defined in 17 U.S.C. 121.”

II. Updating the “nondramatic literary work” limitation in 37 C.F.R. § 201.40(b)(3)(ii) to reflect the exemption’s application to all “literary works and previously published musical works that have been fixed in the form of text or notation” consistent with Section 121(a).

III. Adding the phrase “or 121A” to the end of 37 C.F.R. § 201.40(b)(3)(ii) to track the cross-border provisions of new Section 121A or, if the Office does not believe that exercising the rights expressed within Section 121A implicates Section 1201, clarifying that position in its recommendation.

In addition to the recommended changes associated with the Chafee Amendment and Section 121A, the Copyright Office should eliminate the reference to the price of “mainstream” copies of works in 37 C.F.R. § 201.40(b)(3)(i) and replace this term with a more inclusive phrase such as “market price of an inaccessible copy.”

The other underlying aspects of the exemption should remain the same as those in the current temporary exemption. In response to the Office’s request for specified information that it finds most helpful:

- (1) “[T]he types of copyrighted works that need to be accessed” should be updated to “literary works and previously published musical works that have been fixed in the form of text or notation” as described above;
- (2) “[T]he physical media or devices on which the works are stored or the services through which the works are accessed” continue to be works that are distributed electronically;
- (3) “[T]he purposes for which the works need to be accessed” continue to be for use with assistive technologies;
- (4) “[T]he types of users who want access” should be updated to “eligible persons, as such a person is defined in 17 U.S.C. 121” as detailed above.
- (5) “[T]he 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” remain those that underpin the current exemption – namely, (a) an ongoing shortage of access to print works for people with print disabilities, (b) the continued use of technological access controls for security by publishers of electronically distributed works which often disrupt use of assistive technologies. These barriers have an even greater impact during the COVID-19 pandemic as classrooms transition into virtual form and students are forced to interact more with electronic works and materials.

The following is the full text of the Petitioners’ proposed updates to the existing exemption which is codified at 37 C.F.R. § 201.40(b)(3):

- (3) Literary works, distributed electronically, that are protected by technological measures that either prevent the enabling of read-aloud functionality or interfere with screen readers or other applications or assistive technologies:
 - (i) When a copy of such a work is lawfully obtained by an eligible person, as such a person is defined in 17 U.S.C. 121; provided, however, that the rights owner is remunerated, as appropriate, for the market price of an inaccessible copy of the work as made available to the general public through customary channels; or
 - (ii) When such work is a literary work or previously published musical work that has been fixed in the form of text or notation, lawfully obtained and used by an authorized entity pursuant to 17 U.S.C. 121 or 121A.