



Petition to Renew a Current Exemption Under 17 U.S.C. § 1201

8th Triennial Rulemaking

Please submit a separate petition for each current exemption for which renewal is sought.

NOTE: Use this form if you want to renew a current exemption without modification. If you are seeking to engage in activities not currently permitted by an existing exemption, including those that would require the expansion of a current exemption, you must submit a petition for a new exemption using the form available at <https://www.copyright.gov/1201/2021/new-petition.pdf>.

If you are seeking to expand a current exemption, we recommend that you submit both a petition to renew the current exemption without modification using this form, and, separately, a petition for a new exemption 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 seeking renewal.

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 and Feminist, Gender, and Sexuality Studies at Cornell University; John Jackson, Professor and Dean, Annenberg School for Communication, University of Pennsylvania; the International Communication Association (ICA); the Society for Cinema and Media Studies (SCMS); American Association of University Professors (AAUP); Console-ing Passions and the Library Copyright Alliance (LCA). Parties interested in contacting the submitter should contact Peter DeCherney at decherney@sas.upenn.edu (215-746-3156) and Katherine Sender at ks785@cornell.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. IDENTIFY WHICH CURRENT EXEMPTION PETITIONERS SEEK TO RENEW

Check the appropriate box below that corresponds with the current temporary exemption (see **37 C.F.R. § 201.40**) the petitioners seek to renew. Please check only one box. If renewal of more than one exemption is sought, a separate petition must be submitted for each one.

Motion Pictures (including television programs and videos):

- Excerpts for educational purposes by college and university or K-12 faculty and students
- Excerpts for educational purposes by faculty in massive open online courses (“MOOCs”)
- Excerpts for educational purposes in digital and literacy programs offered by libraries, museums, and other nonprofits
- Excerpts for use in nonfiction multimedia e-books
- Excerpts for use in documentary filmmaking or other films where use is in parody or for a biographical or historically significant nature
- Excerpts for use in noncommercial videos
- For the provision of captioning and/or audio description by disability services offices or similar units at educational institutions for students with disabilities

Literary Works:

- Literary works distributed electronically (*i.e.*, e-books), for use with assistive technologies for persons who are blind, visually impaired, or have print disabilities
- Literary works consisting of compilations of data generated by implanted medical devices and corresponding personal monitoring systems, to access personal data

Computer Programs and Video Games:

- Computer programs that operate cellphones, tablets, mobile hotspots, or wearable devices (*e.g.*, smartwatches), to allow connection of a new or used device to an alternative wireless network (“unlocking”)
- Computer programs that operate smartphones, tablets and other all-purpose mobile computing devices, smart TVs, or voice assistant devices to allow the device to interoperate with or to remove software applications (“jailbreaking”)
- Computer programs that control motorized land vehicles, including farm equipment, for purposes of diagnosis, repair, or modification of the vehicle, including to access diagnostic data
- Computer programs that control smartphones, home appliances, or home systems, for diagnosis, maintenance, or repair of the device or system
- Computer programs for purposes of good-faith security research
- Computer programs other than video games, for the preservation of computer programs and computer program-dependent materials by libraries, archives, and museums
- Video games for which outside server support has been discontinued, to allow individual play by gamers and preservation of games by libraries, archives, and museums (as well as necessary jailbreaking of console computer code for preservation uses only), and discontinued video games that never required server support, for preservation by libraries, archives, and museums
- Computer programs that operate 3D printers, to allow use of alternative feedstock

ITEM C. EXPLANATION OF NEED FOR RENEWAL

Provide a brief explanation summarizing the continuing need and justification for renewing the exemption. The Office anticipates that petitioners may provide a paragraph or two detailing this information, but there is no page limit. While it is permissible to attach supporting documentary evidence as exhibits to this petition, it is not necessary. Below is a hypothetical example of the kind of explanation that the Office would regard as sufficient to support renewal of the unlocking exemption. The Office notes, however, that explanations can take many forms and may differ significantly based on the individual making the declaration and the exemption at issue.

Educators submit this petition to renew the exemption to prohibition against circumvention for motion pictures for educational purposes as stated in 37 CFR. § 201.40 (b) (1) (ii). A version of the educational exemption was first adopted in 2006. It has been renewed, with modifications in the 2010, 2012, 2015, and 2018 rulemakings.

It is not an exaggeration to say that without this exemption, many aspects of higher education in the United States would not have been able to flourish. The close analysis of digital media is being increasingly recognized across many disciplines as a fundamental tool for pedagogy. Professors analyze media in class presentations, and students rely on excerpts from digital media for their own classroom presentations and coursework.

To highlight some recent examples of professors' use of DVD clips in classrooms, Cornell University Communication professor Lee Humphreys samples short segments of movies and television shows for her lectures in her "Media Communication" class. She has shifted from using clips from YouTube because she wants to show higher quality clips and to avoid showing the attached advertisements to her students. She instead copies short clips to embed them in her PowerPoint presentations. She shows clips from the movie *Forgetting Sarah Marshall* and the television show *The Wire* for demonstrating different kinds of sexual depictions in media (inexplicit, implicit, and explicit). Those segments set up the content analysis of sexual content on television. She uses a clip from *The Walking Dead* TV series to discuss media violence and has students count (or try to) the number of violent acts in a particular scene. Another Communication professor Connie Yuan uses segments of films such as *The Joy Luck Club* and *Bajrangi Bhaijaan* to critique representations of cross-cultural communication in her class "Crossing Cultures Through Film." These clips are centrally important to one of her learning objectives: to demonstrate an appreciation of the complexity and diversity of cultures through film.

In addition, co-petitioner Peter Decherney, Professor at the University of Pennsylvania, continues to teach a course on Multimedia Criticism. In this course, students produce short videos analyzing media. Sometimes the video essays resemble written essays. One video essay, for example, compared Disney characters to feminist media criticism published contemporaneously with the films' release. Other video essays draw more from the genres of fan criticism, such as a video that compressed the history of dance on film into a few minutes. The genre of the film essay has a long tradition and includes the work of Soviet filmmaker Serge Eisenstein, French filmmaker Chris Marker, and Vietnamese filmmaker Trinh T. Minh-ha. Additionally, courses on video essays (or multimedia criticism or videographer criticism) are now taught at many universities including Swarthmore College and Middlebury College. There are books on video essays and a journal devoted to publishing video essays. It is important to note that this entire field of teaching and scholarship could not have existed in the United States without fair use and the 1201 educational exemption.

Law faculty and students continue to use the exemption to create a wide range of videos that serve a formal legal function (like a clemency video) or advocate for a particular policy objective. In many such videos, being able to excerpt and comment on news media or other digital media performs a similar function as a citation in an essay. Similarly, faculty teaching in the sciences and their students regularly excerpt and annotate popular videos from PBS, the BBC, and other producers as integral elements of their teaching and assignments.

ITEM C. EXPLANATION OF NEED FOR RENEWAL (CONT'D)

The need for access to high-quality audiovisual works, as explained during previous triennial rulemakings, has not decreased – in fact, it has only increased across the curriculum with the new advances in technology and new methods of distributing motion pictures. Educators are unable to provide an enriching and accurate description and analysis of cinematic or other audiovisual works when prevented from accessing such works due to TPM that block uses that would otherwise be considered fair use but for the TPM circumvention.

While the exemption remains essential for higher education in the twenty-first century, it has caused no harm to copyright owners and to our knowledge, it has not contributed to any infringement.

In conclusion, Educators strongly request the Register to recommend renewal of the exemption for motion picture works for educational purposes as fully expressed in 37 CFR § 201.40 (b) (1) (ii). Without the renewal of these exemptions, college and university students and faculty will face adverse effects negatively impacting the educational experience.

ITEM D. DECLARATION AND SIGNATURE

The declaration is a sworn statement made under penalty of perjury, and must be signed by one of the petitioners named above.

I declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. Based on my own personal knowledge and experience, I have a good faith belief that but for the above-selected exemption's continuation during the next triennial period (October 2021 – October 2024), technological measures controlling access to relevant copyrighted works are likely to diminish the ability of relevant users to make noninfringing uses of these works, and such users are likely to rely upon the above-selected exemption during the next triennial period.
2. To the best of my knowledge, there has not been any material change in the facts, law, or other circumstances set forth in the prior rulemaking record (available at <https://www.copyright.gov/1201/2018>) that originally demonstrated the need for the above-selected exemption, such that renewal of the exemption would not be justified.
3. To the best of my knowledge, the explanation provided in Item C above is true and correct, and supports the above statements.

Name/Organization:

If the petitioner is an entity, this declaration must be signed by an individual at the organization having appropriate personal knowledge.

Peter Decherney, of Cinema and Media Studies and English at the University of Pennsylvania, on behalf of himself and Educators

Signature:

This declaration may be signed electronically (e.g., "/s/ John Smith").

/s/ Peter Decherney

Date:

July 22, 2020