



# 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); Console-ing Passions, and the Library Copyright Alliance (LCA). Parties interested in contacting the submitter should contact Peter DeCherney at [decherney@sas.upenn.edu](mailto:decherney@sas.upenn.edu) (215-746-3156) and Katherine Sender at [ks785@cornell.edu](mailto:ks785@cornell.edu) hereinafter known as “Joint 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.

Joint Educators submit this petition to renew the Massive Open Online Course or “MOOC” exemption for use of audiovisual works for educational purposes as currently set forth in 37 CFR § 201.40 (b) (1) (ii) (B).

As the Register first recognized in the 2015 Triennial Review process, as a result of technological advancement, the MOOC exemption is a natural extension of the well-established exemption to prohibition against circumvention for motion pictures and audiovisual works for educational purposes. The MOOC exemption is the most recent addition to the long established “motion pictures” exemption set forth in 37 CFR § 201.40 (b) (1) which has been accepted and renewed in the 2006, 2011, 2015, and 2018 Copyright Office rulemakings. As technology advanced with respect to offering educational courses online, so did the need to make the same exemptions available in offline courses to online courses. This exemption has never been so relevant as it is now during the COVID-19 pandemic and the universal shift of our education systems to online learning.

MOOCs are online educational courses. Aside from video instruction, MOOCs may feature online quizzes and forums to encourage student engagement, virtual office hours where professors engage with students, and graded assignments (using software or peer students to do the grading) to evaluate what students learn from the course. MOOCs are offered in a wide range of subjects and are available in many different languages. MOOCs provide a tremendous public benefit by making college and university courses available to anyone with an Internet connection. MOOCs have increased access to education by offering participants flexibility in their educational experience and offering anyone with Internet access the opportunity to learn from the most esteemed professors in their fields. The 2015 MOOC exemption and its renewal in 2018 were important first steps in addressing the expanding field of online education. The exemption allows institutions and instructors to develop, provide, and improve MOOCs. Instructors and learners can engage in the best and most technologically advanced educational experience possible. A renewal of the current exemption needs to be granted to provide faculty and learners participating in MOOCs the same ongoing access to audiovisual materials as their counterparts in the physical classroom.

While the use of media in MOOCs is closely tied to the use of media in traditional classes, the exemption has brought clarity to the educational practice of teaching with and about media. For example, before the exemption was granted, there were only 2 or 3 MOOCs in the field of film and media studies, and they relied primarily on public domain examples. Today, there are dozens of MOOCs on film and media offered by US colleges, universities, and others. Petitioner Professor Decherney’s popular course on the history of Hollywood has now reached nearly 48,000 students in over 160 countries. As a result of the growth of online learning during the current pandemic, his enrollment has jumped from 33,000 in March to nearly 48,000 as of the filing date of this petition. In the course, he offers close readings of Hollywood classics like King Kong (1933) and Casablanca (1942) and analyzes digital special effects, sound design, and other elements of filmmaking. Other film and media studies MOOCs explore Hong Kong cinema, the psychology of memory and film, and marriage and the movies. The U.S. still lags far behind the United Kingdom and other countries in film and media studies MOOC production.

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

Moreover, MOOCs use audiovisual works in ways that would qualify as fair use if it were not for the ban on circumvention. In fact, in both the 2015 and 2018 rulemakings, the Copyright Office recognized that fair use analysis indicates that a substantial number of the proposed uses of motion picture excerpts for criticism and comment in MOOCs offered by nonprofit educational institutions likely qualify as non-infringing under section 107. Some may also qualify as excepted uses under section 110(2).485. See <https://www.copyright.gov/1201/2015/registers-recommendation.pdf>.

The existing MOOC exemption has proven very beneficial for both faculty and students and to the best of our knowledge the exemption has caused no harm to rights-holders and has not led to infringement.

In conclusion, the Joint Educators petition for renewal the “MOOC” exemption for motion picture works for educational as fully expressed in 37 CFR § 201.40 (b) (1) (ii) (B). Renewal would ensure that 1201 exemptions remain in line with technological advances with respect to online educational offerings that incorporate non-infringing fair use of copyrighted works.

## 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 Joint Educators

### Signature:

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

/s/ Peter Decherney

### Date:

July 22, 2020