



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.

American Council of the Blind
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Represented by:
Samuelson-Glushko Technology Law & Policy Clinic at Colorado Law
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American Foundation for the Blind
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National Federation of the Blind
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Library Copyright Alliance
Represented by:
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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.

The American Council of the Blind (ACB) works with industries, governments, and other non-profit organizations in order to develop and maintain policies and systems that best provide equal opportunities for people who are blind.

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.

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.

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 Marrakech Treat nations may obtain DRM-free digital access to the text of any item in this collection, consistent with Section 121 of the Copyright Act.

The petitioning organizations urge the Librarian and the Office to renew the exemption to permit circumvention of access controls on literary works distributed electronically (i.e., e-books), for use with assistive technologies for people who are blind, visually impaired, or have print disabilities. The organizations have a longstanding history of advocating for and serving the people this exemption was developed to assist. Many of the organizations stand as repeat supporters and proponents of the exemption and have contributed substantial resources not only to establish the record to support the original exemption but also to ensure that the continuing need for its renewal is addressed during each triennial rulemaking. Each organization can confidently speak to the continuing need for its renewal this session.

Based on their regular interaction with those impacted by the exemption, the organizations believe that the need for this exemption continues to exist and have no reason to believe that the need will disappear within the next three-year period.

For example, the accessibility of e-books is frequently cited as a top priority by ACB's, AFB's, and NFB's stakeholders and members and the patrons of the LCA's [and AALL's] member institutions. Making e-books accessible, including through the application of text-to-speech tools, remains a quintessential non-infringing use under the Second Circuit's landmark HathiTrust holding and under the Chafee Amendment to the Copyright Act, as amended in the course of the implementation in the U.S. of the landmark Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities.

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

As was the case three years ago, many e-books have built-in security software that prevents purchasers and other third parties from utilizing them outside of publisher-designated e-book reader platforms. The organizations are not aware of any anticipated changes to this practice within the e-book industry. As a result, the harms from this practice continue to persist, and will continue for as long as these and similar e-book security practices continue. The availability of non-circumventing alternatives, such as audiobook and Braille versions provided by publishers, remains limited for significant proportions of publishers' catalogs. Absent the exemption and the corresponding ability to circumvent, Section 1201 will undoubtedly adversely affect the ability for people who are blind, visually impaired, or print disabled to enjoy e-books on equal terms in contravention of long-standing commitments to equal access for people with disabilities as a civil and human right.

People who are blind, visually impaired, or print disabled also face a unique challenge in the current COVID-19 pandemic because many physical libraries are offering only limited services—if they are open at all. With many students needing to access online instruction, the use of related electronic materials has increased exponentially. Without the assistance of librarians or other accessibility specialists, students are often left to gain access to these materials on their own. Continued accessibility of e-books is essential during this unprecedented time to ensure that students with print disabilities can access the educational and supplemental instructional materials necessary for success in the virtual classroom setting.

Finally, the record underpinning the exemption has stood and been re-established in the past six triennial reviews dating back to 2003. The exemption has not been substantially opposed in recent reviews, has been cited favorably both by the Office and in congressional hearings as a candidate for permanent legislative exemption, and has even formed the basis for an anti-circumvention requirement for e-book accessibility in international law under the Marrakesh Treaty.

In short, the proponents are aware of no material change in the circumstances that have warranted consistently granting the exemption for the past six triennial reviews. Accordingly, the exemption should be renewed.

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.

Eric Bridges (on behalf of the American Council of the Blind)

Signature:

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

/s/ Eric Bridges

Date:

July 21, 2020