



United States Copyright Office

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

Dear Participants:

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Thank you for your participation in the recent hearing related to Proposed Class 17 (All Works – Accessibility) as part of the Copyright Office’s Section 1201 rulemaking proceeding. As participants are aware, the Office had previously requested that proponents in this class “provide evidence and legal analysis sufficient to enable the Office to make a particularized assessment as to each class of works for which an exemption is sought.”¹ In their written comments and during the hearing, proponents provided some examples of technological protection measures (“TPMs”) that they believe adversely affect accessibility uses of certain types of copyrighted works. The Office now seeks additional information regarding how such effects may apply to particular categories of works as set forth in section 102 of the Copyright Act.

Proponents are invited to provide written responses to the questions below. Opponents will have the opportunity to respond to proponents’ submission.

Audiovisual Works

1. Proponents provide Encrypted Media Extensions (EMEs) as an example of TPMs interfering with the accessibility of web content by individuals with disabilities.² Please explain how EMEs function at a technical level to prevent modification of audiovisual works to create accessible versions for individuals with disabilities (e.g., colorblindness or photosensitive epilepsy).
2. Please identify any other types of TPMs employed on audiovisual content online that inhibit making that content accessible to individuals with disabilities.

Video Games

1. Proponents provide Game Guard as an example of a TPM that prevents modification of video games to provide for accessibility. Please identify any other TPMs that prevent the desired modification of video games for accessibility purposes.
2. Proponents noted some accessibility issues pertaining to video game controllers.³ Please identify the specific TPMs in video games that limit the ability of players to connect accessible game controllers and explain how they work.

Literary Works

1. Proponents contend that “a web content publisher may use TPM[s] to prevent an individual from changing content to an ‘easy-to-read’ or plain format text,” and that TPMs “may also prevent assistive technologies from effectively rendering content in accessible formats and changing the primary mode of interaction.”⁴ Please identify the TPMs at issue in such circumstances, explain how they function, and explain how they prevent the creation of accessible versions for individuals with disabilities.
2. The existing e-book exemption permits circumvention when TPMs “interfere with screen readers or other applications or assistive technologies.”⁵ Please identify any assistive

¹ 85 Fed. Reg. 65,293, 65,309 (Oct. 15, 2020).

² Accessibility Petitioners Class 17 Initial at 11.

³ See Accessibility Petitioners Class 17 Reply at 13 (stating that “[o]ne of the biggest issues for disabled gamers is the struggle to use the typical keyboard and mouse or controllers”).

⁴ See Accessibility Petitioners Class 17 Reply at 14.

⁵ 37 C.F.R. § 201.40(b)(3).

technologies or proposed uses of e-books in proponents' submission currently not covered by the existing exemption.

Computer Programs

Proponents refer to "accessibility-related barriers" in software and discuss circumvention of software in a glucose monitor.⁶ Please explain how an exemption permitting circumvention "for the purpose of creating an accessible version of the work for people with disabilities"⁷ would apply to such a use of medical device software.

Other Qualifications

At the hearing, proponents suggested that an equitable remuneration requirement was implicit in their exemption request, despite not being identified in written submissions. Please identify any and all other qualifications, clarifications, or conditions that you believe are appropriate for this proposed exemption. To the extent a clarification may be appropriate with respect to a certain use of a particular class of works identified in one section (or sub-section) of section 102 of the Copyright Act, please specify the use or class of works.

Proponents should provide their responses **no later than Friday, May 28, 2021** to me at regans@copyright.gov and Anna Chauvet at achau@copyright.gov.

The Office also welcomes a response by opponents to proponents' submissions. To allow time to review proponent's submissions, such responses should be submitted to me at regans@copyright.gov and Anna Chauvet at achau@copyright.gov by **Friday, June 18, 2021**.

Sincerely,



Regan A. Smith
General Counsel and Associate Register of Copyrights

⁶ See Accessibility Petitioners Class 17 Initial at 12–13.

⁷ See Accessibility Petitioners Class 17 Initial at 10.