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UNITED STATES COPYRIGHT OFFICE



Long Comment Regarding a Proposed Exemption Under 17 U.S.C. § 1201

Check here if multimedia evidence is being provided in connection with this comment.

Commenters can provide relevant multimedia evidence to support their arguments. Please note that such evidence must be separately submitted in conformity with the Office's instructions for submitting multimedia evidence, available on the Copyright Office website at copyright.gov/1201/2024.

ITEM A. COMMENTER INFORMATION

This comment is submitted on behalf of the **International Association of Scientific, Technical and Medical Publishers (STM)**. STM is the standard bearer for the academic publishing industry, working with its members to advance trusted research worldwide. We are committed to ensuring that the great discoveries of our time are communicated with pinpoint accuracy, clarity and integrity. We champion innovation across academic research, stimulating the development of new technologies and guidance on universal standards. STM's members are responsible for around two thirds of all published papers from the worlds of science, technology, medicine, social sciences, and humanities. We invest in developing new technologies and standards to ensure research is of the highest quality, extremely trustworthy and easy to access. STM has more than 140 members across the globe including all the major commercial publishers, learned societies and university presses.

Dr. Caroline Sutton
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ITEM B. PROPOSED CLASS ADDRESSED

Proposed Class 3(b): Literary Works – Text and Data Mining

ITEM C. OVERVIEW

The petitioners in this instance are seeking to expand exemptions set forth in 37 C.F.R. 201.40(b)(4) and (5) to circumvent technological protection measures (TPMs) to perform text and data mining (TDM) on motion pictures and literary works for purposes of scholarly research and teaching. STM, due to its members being scholarly publishers, focuses its comments on the application of this exemption to literary works. STM also supports the comments submitted on

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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 under 17 U.S.C. § 1201(a)(1). NOTE: No other advisory statement will be given in connection with this submission. Please keep this statement and refer to it if we communicate with you regarding this submission.

this exemption by the Association of American Publishers (AAP).

The petitioners for this augmented exemption are the Authors Alliance, the American Association of University Professors, and the Library Copyright Alliance. The petitioners propose broadening the already-broad exemption set forth in 2021 through this triennial rulemaking process by allowing the further copying and distribution of corpora of works by institutions to other researchers and institutions.

The petitioners do not propose guardrails on a broadened exemption except that third-party researchers or institutions should comply with the requirements of the existing 2021 exemption. However, under the existing exemption, the further distribution of a corpus which has been circumvented by one entity is barred. The language prohibits further distribution and STM believes that requirement is the only possible and practical way to ensure some degree of security protection on corpora of copyrighted works. The 2021 exemption requires that institutions employ “security measures to prevent further dissemination or downloading of literary works in the corpus, and to limit access to the persons identified (affiliated students or IT staff) or to researchers affiliated with other institutions of higher education solely for purposes of collaboration or replication of research.” (37 C.F.R. 201.40(b)(5)(i)(D)). STM devotes much of its time, energy, and resources on research integrity issues. Copyright concerns notwithstanding, it is central to STM’s mission that the laws and policies for which we advocate be aligned with the goal of advancing trusted research. The requested broadening of the 2021 exemption does not support that goal.

ITEM D. TECHNOLOGICAL PROTECTION MEASURE(S) AND METHOD(S) OF CIRCUMVENTION

STM’s members utilize a variety of TPMs in an effort to protect against infringing uses of their protected materials. Despite best efforts, vast corpora of pirated content exist, some of which is being used to train large language models for generative AI outputs. Entities like SciHub, PirateBay, LibGen, and other collections of pirated works directly harm right holders and pollute the scientific record with unverified content. Whereas the petitioners’ proposal does not foresee or endorse adding to the existing vast and various sets of infringing content that are untethered from trusted sources, neither does their proposal explain how it would avoid that outcome.

ITEM E. ASSERTED ADVERSE EFFECTS ON NONINFRINGING USES

STM’s over 140 members based in over 20 countries around the world collectively publish 66% of all journal articles and tens of thousands of monographs and reference works. These members include academic and professional publishers, learned societies, university presses, start-ups and established players. We promote the contribution that publishers make to innovation, openness and the sharing of knowledge while embracing change to support the growth and sustainability of the research ecosystem. That said, we do not support approaches to openness that introduce an unacceptable risk of piracy or security compromise. The petitioners’ suggested proposal, in STM’s view, would allow an unfettered and unchecked reproduction and distribution of copyrighted works that is not well supported by a description of existing adverse impact and does not adequately explain how the risks of piracy and security failure would be accounted for. Provided an institution or individual meets the necessary requirements of the 2021 exemption, there is no need that they receive it from an entity that has already circumvented the TPM. In

STM's view, without further information, the risks to right holders far outweigh the purported benefits to the petitioners.

DOCUMENTARY EVIDENCE

STM has not solicited or collected documentary evidence at this time.

Thank you for considering STM's submission opposing an expansion of text and data mining for proposed class 3(b): Literary Works.

February 20, 2024

STM
Caroline Sutton

A handwritten signature in cursive script, appearing to read "Caroline Sutton".

CEO, STM

cc: Molly Stech
General Counsel, STM
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