

Comment of Nathan Robert Wise, Brigham Young University–Idaho

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Proceeding: Tenth Triennial Section 1201 Rulemaking Proceeding

Docket: COLC-2026-0100; Docket No. 2026-4

Comment Type: Long-Form Comment in Response to Petition for Renewal of Class 1: Audiovisual Works—Educational Use

I. Introduction and Summary

This comment supports renewal of the current exemption in 37 CFR § 201.40(b)(1) for audiovisual works used for educational purposes by college and university faculty and students. The exemption remains important for criticism, comment, and teaching in higher education, and it should be renewed through the streamlined renewal process.¹

At the same time, the Copyright Office should clarify the regulatory language governing screen-capture technology. The current wording creates unnecessary confusion by placing screen capture within a circumvention framework even though ordinary screen-capture tools record playback output after lawful acquisition and decryption rather than bypassing technological protection measures. The Office should preserve the substance of the educational exemption while clarifying that standard screen-capture technology is a non-circumventing alternative.

II. The Existing Language Creates Operational Confusion for Educators

The current rule provides that an individual may engage in circumvention where the individual reasonably believes that non-circumventing alternatives are unable to produce the required level of high-quality content, “or the circumvention is undertaken using screen-capture technology that appears to be offered to the public as enabling the reproduction of motion pictures after content has been lawfully acquired and decrypted.”²

In practice, this phrasing creates confusion on university campuses. Because “screen-capture technology” appears inside a circumvention clause and is introduced with the

¹ See U.S. Copyright Office, Rulemaking Proceedings Under Section 1201 of Title 17, Tenth Triennial Section 1201 Proceeding; see also 37 CFR § 201.40(b)(1).

² Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 86 Fed. Reg. 59627, 59639–40 (Oct. 28, 2021) (codified at 37 CFR § 201.40(b)(1)).

phrase “the circumvention is undertaken,” educators may reasonably but incorrectly conclude that ordinary screen recording is itself an act of digital lock circumvention. That interpretation makes compliance training more difficult and may discourage legitimate teaching uses that do not involve bypassing access controls.

III. Standard Screen Capture Should Be Treated as a Non-Circumventing Alternative

Standard screen-capture utilities do not bypass encryption keys or defeat technological protection measures protecting access to the underlying motion picture. Instead, they record the unencrypted playback output displayed on a user’s monitor after the content has been lawfully accessed and decrypted by authorized means.

The administrative record in the 2021 Section 1201 proceeding reflects this distinction. On page 51 of the Register’s Recommendation, the Office summarized rightsholder arguments that, “to the extent any individual user might wish to use short clips on a platform that does not support screen-capture, the record indicates that there are viable alternatives to circumvention,” including “recording video from a screen using a separate device” and “using screen capture software.”³ That discussion treated screen capture as an alternative to circumvention, not as circumvention itself. The final regulatory text should therefore avoid describing ordinary screen capture as a form of circumvention.

IV. Requested Clarification

The Copyright Office should renew the educational exemption and clarify that standard screen-capture technology, when used to record unencrypted display output after lawful acquisition and decryption, is a non-circumventing alternative outside the scope of Section 1201 circumvention.

To make that distinction explicit, the Office should replace the portion of the existing provision beginning with “the person engaging in circumvention” and ending immediately before the list of permitted uses with language substantially as follows:

“The person making the use under paragraphs (b)(1)(i) and (b)(1)(ii)(A) and (B) of this section either:

(A) uses widely available screen-capture technology that records unencrypted display output after the content has been lawfully acquired and decrypted, which constitutes a non-circumventing alternative and not circumvention under this section; or

³ U.S. Copyright Office, Section 1201 Rulemaking: Eighth Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention, Recommendation of the Register of Copyrights 51 (Oct. 2021).

(B) engages in circumvention after reasonably determining that non-circumventing alternatives are unable to produce the required level of high-quality content;

provided that the use is undertaken solely in order to make use of short portions of the motion pictures in the following instances:”

V. Conclusion

For the foregoing reasons, I respectfully support renewal of the Class 1 exemption for educational uses of audiovisual works by college and university faculty and students. The exemption remains necessary for criticism, comment, teaching, and scholarship in higher education. At the same time, I urge the Copyright Office to clarify that ordinary screen-capture technology, when used to record unencrypted display output after lawful acquisition and decryption, is a non-circumventing alternative rather than an act of circumvention. The requested wording aligns with the administrative record, which treated screen capture as an alternative to circumvention, and provides needed clarity for educators and institutional compliance personnel.⁴ Making that distinction explicit would help educators understand when Section 1201 is—and is not—implicated, preserve the current exemption, and reduce confusion created by the existing wording.

⁴ See Register’s Recommendation at 51.

Appendix A: Redline Comparison for Reference Only

This appendix is included for reference only and may be omitted from the filed comment. The main comment above is intended to stand on its own without this redline comparison.

Existing Text:

“...the person engaging in circumvention under paragraphs (b)(1)(i) and (b)(1)(ii)(A) and (B) of this section reasonably believes that non-circumventing alternatives are unable to produce the required level of high-quality content, or the circumvention is undertaken using screen-capture technology that appears to be offered to the public as enabling the reproduction of motion pictures after content has been lawfully acquired and decrypted, where circumvention is undertaken solely in order to make use of short portions of the motion pictures in the following instances:”

Proposed Clarifying Revision:

~~“...the person engaging in circumvention under paragraphs (b)(1)(i) and (b)(1)(ii)(A) and (B) of this section reasonably believes that non-circumventing alternatives are unable to produce the required level of high-quality content, or the circumvention is undertaken using screen-capture technology that appears to be offered to the public as enabling the reproduction of motion pictures after content has been lawfully acquired and decrypted, where circumvention is undertaken solely in order to make use of short portions of the motion pictures in the following instances:”~~

“...the person making the use under paragraphs (b)(1)(i) and (b)(1)(ii)(A) and (B) of this section either:

(A) uses widely available screen-capture technology that records unencrypted display output after the content has been lawfully acquired and decrypted, which constitutes a non-circumventing alternative and not circumvention under this section; or

(B) engages in circumvention after reasonably determining that non-circumventing alternatives are unable to produce the required level of high-quality content;

provided that the use is undertaken solely in order to make use of short portions of the motion pictures in the following instances:”