



# **A Legal Overview**

of Section 1201

# Section 1201

of Title 17 of the United States Code

Section 1201 of title 17 is part of the **Digital Millennium Copyright Act (“DMCA”)**, which Congress enacted to further the growth of the digital marketplace. It encourages copyright owners to provide greater access to their digital works by providing them with legal protections against unauthorized access.

# Section 1201

of Title 17 of the United States Code

## Section 1201 prohibits two types of activities:

1. **“Circumventing a technological protection measure”** (or **“TPM”**), that is, descrambling a scrambled work, decrypting an encrypted work, or otherwise avoiding, bypassing, removing, deactivating, or impairing a TPM, without the authority of the copyright owner
2. **“Trafficking”** in certain circumvention technologies, including manufacturing, importing, offering to the public, providing, or otherwise trafficking in certain circumvention technologies, products, services, devices, or components

# Section 1201

## Access Controls vs. Copy Controls

### Section 1201 concerns two types of TPMs:

- “**Access Controls**” – Technological measures that prevent unauthorized access to copyrighted works
- “**Copy Controls**” – Technological measures that protect the exclusive rights granted to copyright owners under title 17, such as measures preventing unauthorized reproduction



# Section 1201

## Circumvention Prohibitions

**Section 1201(a)(1)(A) prohibits** circumvention of an **access control**, for example, decrypting a Blu-Ray disc so that you can access it on an unauthorized device

- This prohibition is subject to certain permanent, statutory exemptions and temporary exemptions (via a rulemaking), both discussed later
- The law **does not prohibit** circumvention of a **copy control**, but acts taken after circumvention may constitute copyright infringement



# Section 1201

## Trafficking Prohibitions

*The Section 1201 Rulemaking cannot grant exemptions to the trafficking prohibitions*

Trafficking in  
“**access control**”  
circumvention technology

Section 1201(a)(2) prohibits trafficking in technologies, products, or services primarily designed or produced to circumvent an access control

Trafficking in  
“**copy control**”  
circumvention technology

Section 1201(b) prohibits trafficking in technologies, products, or services primarily designed or produced to circumvent a copy control



# Section 1201

Access Controls vs. Copy Controls

17 U.S.C. § 1201	Circumvention Prohibition?	Trafficking Prohibition?
Access Controls	Yes § 1201(a)(1)	Yes § 1201(a)(2)
Copy Controls	No*	Yes § 1201(b)

*\* Circumventing a copy control to reproduce a work may constitute copyright infringement*

# Section 1201

## Permanent Exemptions

There are two ways to get an exemption (or exception) to the prohibitions against circumvention:

1. Section 1201 includes **permanent exemptions** to the prohibitions against circumvention, but apply only to the specific circumstances defined in the statute, including exemptions for:



- Nonprofit libraries, archives, and educational institutions



- Encryption research



- Protection of minors from online material



- Law enforcement, intelligence, and other government activities



- Protection of personally identifying information



- Reverse engineering



- Security testing



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## Temporary Exemptions

### 2. Section 1201 also includes a procedure to request temporary exemptions to the prohibition against circumvention

- These exemptions are created through a rulemaking that takes place every three years, and take a little over a year to complete



**Copyright Office:** Conducts public rulemaking and drafts recommendation to Librarian of Congress after consulting with NTIA



**NTIA:** Consults with Copyright Office during the rulemaking



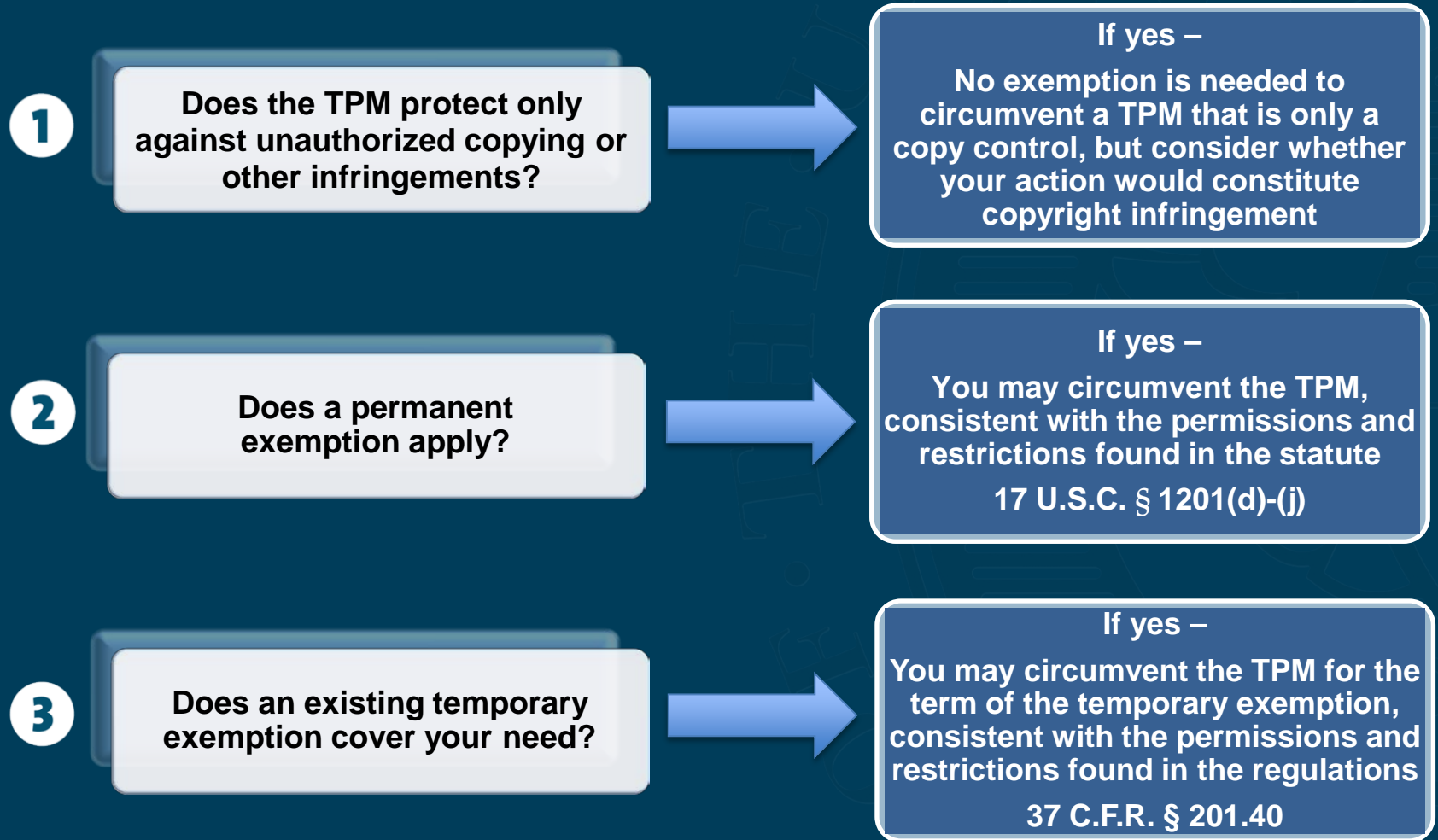
LIBRARY OF  
CONGRESS

**Librarian of Congress:** May grant exemptions from the prohibition against circumventing access controls

*Information on current temporary exemptions can be found on the Copyright Office website at [www.copyright.gov/1201](http://www.copyright.gov/1201)*

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## Using a Permanent or Temporary Exemption



If the answer to all of these questions is “no,” consider requesting a new temporary exemption in the next triennial rulemaking

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## Triennial Rulemaking

Announcements about the triennial rulemaking will be published in multiple places:

- **Federal Register:**  
<https://www.federalregister.gov/>
- **NewsNet:**  
<https://www.copyright.gov/newsnet/>
- **Copyright Office  
section 1201 webpage:**  
<https://www.copyright.gov/1201/>





## Disclaimer:

The United States Copyright Office is providing general information about section 1201 of the Copyright Act and its rulemaking proceeding.

By law, the Office cannot provide legal advice to the public.