



Petition to Renew a Current Exemption Under 17 U.S.C. § 1201

9th 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 copyright.gov/1201/2024/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.

This petition is submitted by Peter Decherney, Professor of Cinema and Media Studies and English at the University of Pennsylvania on behalf of himself and Michael Delli Carpini, Professor and Interim Dean, Annenberg School for Communication, University of Pennsylvania; the Society for Cinema and Media Studies (SCMS) and the Library Copyright Alliance (LCA) hereinafter known as “Educators.”

Parties interested in contacting the submitter should contact Peter DeCherney at decherney@sas.upenn.edu (215-746-3156.)

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 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
- Excerpts for use in nonfiction multimedia e-books
- Excerpts for educational purposes by college and university faculty, students, or employees acting at the direction of faculty, or K–12 educators and students
- Excerpts for educational purposes by faculty and employees acting at the direction of faculty in massive open online courses (“MOOCs”)
- Excerpts for educational purposes in digital and literacy programs offered by libraries, museums, and other nonprofits
- For the provision of captioning and/or audio description by disability services offices or similar units at educational institutions for students, faculty, or staff with disabilities
- For the preservation or the creation of a replacement copy of the motion picture by libraries, archives, or museums
- For text and data mining by a researcher affiliated with a nonprofit institution of higher education, or by student or staff at the direction of such researcher, for the purpose of scholarly research and teaching

Literary Works:

- Literary works distributed electronically for text and data mining by a researcher affiliated with a nonprofit institution of higher education, or by student or staff at the direction of such researcher, for the purpose of scholarly research and teaching
- Literary works or previously published musical works that have been fixed in the form of text or notation whose technological protection measures interfere with assistive technologies
- Literary works consisting of compilations of data generated by medical devices or their personal corresponding monitoring systems, to access personal data

Computer Programs and Video Games:

- Computer programs that operate wireless devices, to allow connection to an alternative wireless network (“unlocking”)
- Computer programs that operate smartphones and portable all-purpose mobile computing devices to allow the device to interoperate with or to remove software applications (“jailbreaking”)
- Computer programs that operate smart televisions to allow the device to interoperate with software applications on the television for purposes other than gaining unauthorized access to copyrighted works (“jailbreaking”)
- Computer programs that operate voice assistant devices to allow the device to interoperate with or to remove software applications for purposes other than gaining unauthorized access to copyrighted works (“jailbreaking”)
- Computer programs that operate routers and dedicated network devices to allow the device to interoperate with software applications on the device for purposes other than gaining unauthorized access to copyrighted works (“jailbreaking”)
- Computer programs that control motorized land vehicles, marine vessels, or mechanized agricultural vehicles or vessels for purposes of diagnosis, repair, or modification of the vehicle, including to access diagnostic data
- Computer programs that control devices designed primarily for use by consumers for diagnosis, maintenance, or repair of the device or system
- Computer programs that control medical devices or systems, and related data files, for diagnosis, maintenance, or repair of the device or system
- Computer programs for purposes of good-faith security research
- 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 other than video games, for the preservation of computer programs and computer program-dependent materials by libraries, archives, and museums
- Computer programs that operate 3D printers, to allow use of alternative material
- Computer programs for purpose of investigating potential infringement of free and open source computer programs
- Video games in the form of computer programs for purpose of allowing an individual with a physical disability to use alternative software or hardware input methods

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 will 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.

Educators submit this petition to renew the exemption to prohibition against circumvention for motion pictures for educational purposes as stated in 37 CFR. § 201.40 (b) (1) (ii).

A version of the educational exemption was first adopted in 2006. It has been renewed, with modifications in the 2010, 2012, 2015, 2018 and 2021 rulemakings. It has become clear each rulemaking cycle that without this exemption, many aspects of higher education in the United States would not have been able to flourish. The close analysis of digital media is being increasingly recognized across many disciplines as a fundamental tool for pedagogy. Educators across the curriculum increasingly analyze media in class presentations, and students rely on excerpts from digital media for their own classroom presentations and coursework.

The following examples of faculty use of DVD clips in classrooms highlight the continuing need for this exemption.

Petitioner Peter Decherney, Professor at the University of Pennsylvania, continues to rely heavily on this exemption in teaching his course on Multimedia Criticism. In this course, students produce short videos analyzing media. Sometimes the video essays resemble written essays. Additionally, courses on video essays (or multimedia criticism or videographer criticism) are increasingly being offered at many schools including Swarthmore and Middlebury. There are scholarly books discussing video essays and a journal devoted to publishing video essays. This entire field of teaching and scholarship could not have existed in the United States without fair use and the 1201 educational exemption.

Decherney's colleague, University of Pennsylvania professor Meta Mazaj teaches World Film History. In the course she uses hundreds of clips to compare and contrast formal techniques of editing, cinematography, staging, and more. She teaches approaches to tracking shots using clips where tracking shot is done with a steady cam (as in Scorsese's *Goodfellas*) vs hand held camera (as in Gus Van Sant's *Elephant*). Digital clips are essential to demonstrate both obvious and subtle differences in editing techniques. She shows, among other things, various clips from Hitchcock's films, *Birds*, *Psycho*, etc., to show how he constructs editing patterns and rhythms in order to create suspense.

Penn Medieval Literature Professor David Wallace frequently uses film and television clips to compare medieval poetry with the style of popular contemporary film. He also uses clips to focus on historical detail. For example, he shows a sequence from the movie *Cromwell* that recreates the execution of Charles I, played by Alec Guinness. Guinness walks to his execution through the Whitehall banqueting chamber in London, where the event originally took place in January 1649. The film uses the historical site and a constructed stage and execution block. They follow the original path to execution and use the actual words of Charles I. Wallace believes that this is the best way to teach 'regicide,' and nothing can substitute for the close analysis of detail of the setting.

The need for access to high-quality audiovisual works, as detailed in previous triennial rulemaking proceedings, has only increased across the curriculum with new advances in technology and new methods of distributing motion pictures. Educators are unable to provide an enriching and accurate description and analysis of cinematic or other audiovisual works when prevented from accessing such works due to TPM that block uses that would otherwise be considered fair use but for the TPM circumvention.

This exemption remains essential for higher education in the twenty-first century and has been used by educators for nearly twenty years. It has caused no harm to copyright owners and to our knowledge, and has not contributed to any infringement. Educators again request the Register to recommend renewal of the exemptions for motion picture works for educational purposes as fully expressed in 37 CFR § 201.40 (b) (1) (ii). Renewal of these exemptions will ensure that faculty and students have access to important content and an improved educational experience for all learners.

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

[Empty box for explanation of need for renewal]

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 2024–October 2027), 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 copyright.gov/1201/2021) 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.

Peter Decherney, of Cinema and Media Studies and English at the University of Pennsylvania, on behalf of himself and Educators

Signature:

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

/s/ Peter Decherney

Date:

07/07/23