

UNITED STATES COPYRIGHT OFFICE



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

Proposed Class 17: All Works—Accessibility Uses
Submitted by: Association of American Publishers

[] **Check here if multimedia evidence is being provided in connection with this comment**

ITEM A. COMMENTER INFORMATION

This comment is submitted on behalf of the Association of American Publishers (“AAP”). AAP represents the leading book, journal and educational publishers in the United States on matters of law and policy, advocating for outcomes that incentivize creative expression, professional content and innovative educational materials. AAP’s members depend first and foremost on a rational and effective copyright system.

ITEM B. PROPOSED CLASS ADDRESSED

Proposed Class 17: All Works—Accessibility Uses

ITEM C. OVERVIEW

Petitioners seek an exemption that would allow “circumvention of technological protection measures on each cognizable class of copyrighted works under Section 102(a) of the Copyright Act for non-infringing accessibility uses.” Petition for New Exemption Under 17 U.S.C. § 1201, at 4; Notice of Proposed Rulemaking, 85 Fed. Reg. 65293, 65308 (Oct. 15, 2020) (“NPRM”).

Section 1201 authorizes the Librarian of Congress, upon recommendation of the Register of Copyrights, to grant exemptions to the prohibition on circumvention for “particular class[es] of copyrighted works.” 17 U.S.C. § 1201(a)(1)(C). As Congress has explained, “the particular class of copyrighted works” designated for an exemption under section 1201 must be “‘a narrow and focused subset’ of the broad categories of works.” U.S. Copyright Office, *Section 1201 Rulemaking: Seventh Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention* 13 (2018) (quoting H.R. Rep. No. 105-551, pt. 2, at 38 (1998)) (emphasis omitted). Given Petitioners’ failure to properly identify a particular class of copyrighted works, the Copyright Office has already indicated that it is beyond the Librarian’s authority to adopt the exemption as proposed. NPRM at 65309. The Copyright Office, noting the “important public policy considerations raised by this request and past exemptions adopted with respect to facilitating accessibility uses,” recommended that Petitioners further develop and refine their proposal. This, too, Petitioners did not do, and thus their petition fails.

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 Web site 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.

AAP agrees with the Register's assessment of the Librarian's authority under section 1201, and also recognizes accessibility as an important consideration of copyright policy. AAP notes that in the case of literary works, there is already an existing exemption to permit circumvention of ebooks for accessibility purposes. *See* 37 C.F.R. § 201.40(b)(3). AAP supports the modification and expansion of the existing exemption as proposed by some of the same petitioners in Proposed Class 8.

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Association of American Publishers



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