



Petition for New Exemption Under 17 U.S.C. § 1201

8th Triennial Rulemaking

Please submit a separate petition for each proposed exemption.

NOTE: Use this form if you are seeking to engage in activities not currently permitted by an existing exemption. If you are seeking to engage in activities that are permitted by a current exemption, instead of submitting this form, you may submit a petition to renew that exemption using the form available at <https://www.copyright.gov/1201/2021/renewal-petition.pdf>.

If you are seeking to expand a current exemption, we recommend that you submit both a petition to renew the current exemption, and, separately, a petition for a new exemption using this form 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 proposing the exemption.

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 Professor Katherine Sender, Department of Communication, Cornell University; John Jackson, Professor and Dean, Annenberg School for Communication, University of Pennsylvania; Rebecca Stein, PhD, Executive Director, Online Learning Initiative, University of Pennsylvania; the International Communication Association (ICA); the Society for Cinema and Media Studies (SCMS); Console-ing Passions; the Library Copyright Alliance (LCA), Shiv Gaglani, CEO and Co-Founder, Osmosis.org; Stefan Wisbauer, Managing Director, Lectorio; Andrew Berg, MD, Co-Founder, SketchyMedical; Saud Siddiqui, MD, Co-founder, SketchyMedical; and Ken Robertson, COO, Picmonic Inc.

Parties interested in contacting the submitter should contact Peter DeCherney at decherney@sas.upenn.edu (215-746-3156) and Katherine Sender at ks785@cornell.edu hereinafter known as “ Joint Educators. ”

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. DESCRIPTION OF PROPOSED NEW EXEMPTION

Provide a brief statement explaining the nature of the proposed new or expanded exemption. The information that would be most helpful to the Office includes the following, to the extent relevant: (1) the types of copyrighted works that need to be accessed; (2) the physical media or devices on which the works are stored or the services through which the works are accessed; (3) the purposes for which the works need to be accessed; (4) the types of users who want access; and (5) the barriers that currently exist or which are likely to exist in the near future preventing these users from obtaining access to the relevant copyrighted works.

Petitioners need not propose precise regulatory language or fully define the contours of an exemption class. Rather, a short, plain statement describing the nature of the activities the petitioners wish to engage in will be sufficient, as proponents will have the opportunity to further refine or expound upon their initial petitions during later phases of the rulemaking. The Office anticipates that in many cases petitioners will be able to adequately describe in plain terms the relevant information in a few sentences, or even a single sentence, as with the examples below.

In the last three years, the drive for online education in this country has skyrocketed. Long before COVID forced students everywhere to learn at their dining room tables, people of all ages, in a wide range of life situations, were turning to online learning platforms including Khan Academy, LinkedIn Learning, Osmosis.org and Code.org for supplemental education, upskilling, retraining, recharging, and lifelong learning. In addition, most schools, colleges, and universities use online learning platforms as resources for their syllabi and as supplements to their curricula. Still others offer MOOCs and a wide range of online courses to the general public. The existing exemption for online learning applies to only some of these learning settings. Thus, we join to propose its expansion, as described below. Our goal is simple – to assure that all educators and all learners enjoy the same rights to teach, study, and learn.

By providing equal access to public and private school pupils, home-schooled students, and part-time learners of all kinds, online learning platforms level the playing field and provide equal access to education. These online learning platforms serve students of all ages, regardless of location or learning environment, providing education to each student who needs it, particularly in STEM fields for those striving to expand their formal and informal educational and vocational opportunities. High school students can seek out science and mathematics simulations, regardless of their school's ability to offer state-of-the-art laboratories or hire Advanced Calculus teachers. Late at night, after shifts as first-responders, nursing and medical students can seek out additional materials to deepen their understanding of an anatomy subject or supplement preparation for an upcoming professional examination. Laid-off auto workers can retrain and prepare for new careers. And curious seniors can combat isolation and maintain their curiosity about the world around them. Many of these resources are free or relatively inexpensive for learners to access. Because these learning platforms bring knowledge to us all, effective online education can help break down barriers to learning posed by social inequality.

In the dark days of COVID, we are learning to appreciate how much the online education environment has changed in the last three years and how deeply ingrained online learning platforms have become. As doors of our schools and universities closed, we watched with admiration as teachers shifted overnight from in-person to online classes. We then celebrated as students, parents, unemployed workers, and many others in our strained society found online learning options that provided them with additional opportunities for educational enrichment supplementation. When the pandemic recedes, the value of online learning will remain – and it is in our collective interest to make that learning as effective as possible. Hence, our proposal:

To provide clarity to the educational practice of online instructional learning, in this 8th Triennial Rulemaking of the US Copyright Office, we seek to add a new educational exemption under 17 U.S.C. § 1201:

To allow educators and preparers of online learning materials to use short portions of motion pictures (including television shows and videos), as defined in 17 U.S.C. 101, for the purpose of criticism, comment, illustration and explanation in offerings for registered learners on online learning platforms when use of the film and media excerpts will contribute significantly to learning.

The online provider will limit these online learning materials, to the extent technologically feasible, to registered learners of the online learning platform, institute copyright policies, and provide copyright information to educators and preparers of online learning materials, learners, and relevant staff members.

(Continued)

ITEM B. DESCRIPTION OF PROPOSED NEW EXEMPTION (CONT'D)

Further, the online provider, to the extent technologically feasible, will work to reasonably prevent unauthorized further dissemination of online learning materials in accessible form to others, including after the registration period ends.

What do we gain by allowing educators and preparers of online learning materials greater leeway to exercise their fair use rights by incorporating short portions of motion pictures, as defined in 17 U.S.C. 101, in offerings on online learning platforms? We gain the clarity, for example, of understanding that the online instructional materials on achondroplasia for a medical professional may use a powerful scene in which Peter Dinklage, in character as "Game of Throne's" Tyrion Lannister, shared the isolation and pain sometimes experienced by those with dwarfism. We establish with certainty that an online coding course aimed at girls who aspire to STEM careers can share the inspiring stories of Katherine Johnson and Mary Jackson through short clips from the Academy Award-nominated movie "Hidden Figures."

Educators teaching in-person classes, educators teaching for-credit online classes, and as a result of 2015 exemption (which was renewed in 2018)), educators teaching Massive Open Online Courses (MOOCs) already may take advantage of these types of powerful instructional illustrations to make their lessons as effective as possible. But a growing category of online learning platforms that dramatically increase access to learning is being left behind. With an expanded exemption, we can ensure that a wide range of actual and potential learners who depend on these platforms will not be second-class citizens in a knowledge-based society.

If we do not allow educators and preparers of online learning materials on online learning platforms to use short clips from copyrighted videos, we lose the ability to meet learners of all ages, incomes and races where they are, by using clear and inspiring visual examples. Access to digital learning platforms is general if not ubiquitous, and most actual and potential learners are steeped in visual culture; indeed younger ones are now digital natives. Short video clips in online materials can serve to promote, to encourage commentary and critique, to motivate reflection and discussion, and to inspire learning.

We note that the creation of this exception is fully consistent with Section 107 of the Copyright Act which provides that the fair use of a copyrighted work for purposes such as criticism, comment, news reporting, teaching, scholarship and research is not an infringement of copyright. The uses facilitated by the proposed new exemption are at the core of those Section 107 was written to protect. Of course, not all educational uses are fair uses, but many are. And educators in all kinds of settings, from the traditional to the innovative, including those who work in for-profit settings, enjoy fair use rights. There is no longer any adequate justification for enabling fair use for some educators while blocking the practical ability of others to take advantage of the doctrine – and thus, by extension, discriminating against their students.

We further note that throughout the history of the 1201 proceeding, the Copyright Office has promised that access to high-quality educational content will not be hobbled by 1201 restrictions. The ability to quote appropriately from copyrighted material is key to fulfilling this promise and essential to modern online teaching and online learning platforms.

Desire for knowledge and belief in education as a tool for self-improvement run deep in the culture of the United States. This is exemplified in the familiar language of Article I, Section 8, Clause 8 of our Constitution, which exemplifies shared belief in the "Progress of Science and useful Arts." We ask only for clarification that online educators and preparers of online learning materials may use short quotations of motion pictures and television shows to bring the most vivid, exciting, and inspiring examples in their lessons.