



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.

American Council of the Blind
Eric Bridges, Executive Director
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Represented by:
Samuelson-Glushko Technology Law & Policy Clinic (TLPC) at Colorado Law
Blake E. Reid, Director
Mikaela Colvin, Student Attorney
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(petitioner list continues under Item B)

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.

Petitioners and Contact Information (cont'd)

American Foundation for the Blind
Sarah Malaier, Public Policy and Research Advisor
smalaier@afb.org

Association of Late-Deafened Adults
Richard Brown, President
Rockford, IL
President@alda.org

Association of Transcribers and Speech-to-Text Providers (ATSP)
Alison Nelson Chabot, Interim President
info@atspnetwork.org

Association on Higher Education and Disability
Stephan Smith, Executive Director
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Benetech/Bookshare
Brad Turner, VP/GM, Global Education and Literacy
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Gallaudet University
Roberta J. Cordano, JD, President
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HathiTrust
Mike Furlough, Executive Director
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Hearing Loss Association of America
Barbara Kelley, Executive Director
Contact: Lise Hamlin, Director of Public Policy
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Library Copyright Alliance
Represented by:
Jonathan Band
policybandwidth
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ITEM B. DESCRIPTION OF PROPOSED NEW EXEMPTION (CONT'D)

Petitioners and Contact Information (cont'd)

National Association of the Deaf
Howard Rosenblum, Chief Executive Officer
Contact: Zainab Alkebsi
Silver Spring, MD
zainab.alkebsi@nad.org

National Federation of the Blind
Mark A. Riccobono, President
officeofthepresident@nfb.org

Telecommunications for the Deaf and Hard of Hearing, Inc.
Eric Kaika, Chief Executive Officer
Silver Spring, MD
Kaika@TDIforAccess.org

The American Council of the Blind (ACB) is a national grassroots consumer organization representing Americans who are blind and visually impaired. With 70 affiliates, ACB strives to increase the independence, security, equality of opportunity, and to improve quality of life for all blind and visually impaired people.

The American Foundation for the Blind (AFB) works to create a world of no limits for people who are blind or visually impaired by mobilizing leaders, advancing understanding, and championing impactful policies and practices using research and data.

The Association of Late Deafened Adults (ALDA) is a non-profit membership corporation comprised principally of people who lost some or all of their hearing after having acquired spoken language. Its members include people who communicate primarily through sign language and people who use hearing aids or cochlear implants and communicate aurally. Part of its mission includes advocating for measures that will better enable its members and other similarly situated people to fully participate in all aspects of life.

The Association of Transcribers and Speech-to-Text Providers (ATSP) is a non-profit organization devoted to advancing the delivery of real-time speech-to-text services to deaf or hard-of-hearing people.

AHEAD is the leading professional membership association for individuals committed to equity for persons with disabilities in higher education. Since 1977, AHEAD has offered an unparalleled member experience to disability resource professionals, student affairs personnel, ADA coordinators, diversity officers, AT/IT staff, faculty and other instructional personnel, and colleagues who are invested in creating welcoming higher education experiences for disabled individuals.

Bookshare is an ebook library that makes reading easier. People with dyslexia, blindness, cerebral palsy, and other reading barriers can read in ways that work for them with ebooks in audio, audio + highlighted text, braille, and other customizable formats.

Gallaudet University, federally chartered in 1864, is a bilingual, diverse, multicultural institution of higher education that ensures the intellectual and professional advancement of deaf, hard of hearing, and deafblind individuals through American Sign Language and English. Gallaudet maintains a proud tradition of research and scholarly activity and prepares its graduates for career opportunities in a highly competitive, technological, and rapidly changing world.

HathiTrust's Digital Library contains over 17 million books digitized from academic libraries. Through its Accessible Text Request Service, print disabled users in higher education institutions in the US and in Marrakesh Treaty nations may obtain DRM-free digital access to the text of any item in this collection, consistent with Section 121 of the

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

Since 1979, The Hearing Loss Association of America (HLAA) opens the world of communication to people with hearing loss through information, education, support, and advocacy. In addition to the Walk4Hearing, HLAA holds annual conventions, publishes the magazine, Hearing Life, serves as an advocate for people with hearing loss across the broad spectrum of communication access needs. HLAA has a nationwide network of more than 140 chapters and state associations reaching out to and supporting people with hearing loss across the country.

The Library Copyright Alliance (LCA) consists of three major library associations—the American Library Association (ALA), the Association of College and Research Libraries (ACRL), and the Association of Research Libraries (ARL)—that collectively represent over 100,000 libraries in the United States. Libraries provide services to visually impaired people, both inside and outside of educational settings, in particular by converting works into formats accessible to the print disabled.

Established in 1880, the National Association of the Deaf is the oldest national civil rights organization in the United States of America. The NAD is also the largest consumer-based advocacy organization safeguarding the civil and accessibility rights of deaf and hard of hearing individuals in the USA through public education, litigation, and policy advocacy. The advocacy scope of the NAD is broad, covering the breadth of a lifetime and impacting future generations in the areas of education, technology, and more.

Since 1940, the National Federation of the Blind has advocated for equality of opportunity for the nation's blind, and as part of that mission, the Federation has vigorously stood for equal access to information through its leadership in many ways including leading efforts to secure passage of the Chafee Amendment to the Copyright Act and adoption of the Marrakesh Treaty and its intervention as a party in the HathiTrust case.

TDI shapes America's public policy in telecommunications, media, and information technology to advance the interests of all people who are deaf, hard of hearing, late-deafened, deafblind, and deaf-plus (with other disabilities).

Description of Proposed New Exemption

To enable equitable access to copyrighted works for people who have disabilities, the above-signed petitioners propose a more comprehensive exemption to resolve the shortcomings of the current, piecemeal approach to Section 1201 exemptions for accessibility. Specifically, the Office should recommend an exemption for the 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.

The objective of this proposal is to ensure that people who have disabilities are not adversely affected by Section 1201's prohibitions in their ability to obtain accessible versions of copyrighted materials. Currently, people who have disabilities and their supporting organizations face the difficult challenge of seeking anew and interpreting a patchwork of existing Section 1201 exemptions when trying to make copyrighted materials accessible—in addition to navigating a variety of other economic and technological barriers to making works accessible.

The Copyright Office should recommend—and the Librarian should grant—a broader, more flexible exemption that permits people to circumvent access controls when they are making otherwise noninfringing accessibility uses of any of the categories of works in Section 102(a). People with a wide range of disabilities need to be able to interact not only with literary and audiovisual works, but with the full range of works, including architectural, choreographic, and sculptural works. People who have disabilities and those who support them need to be able to reproduce, adapt, distribute, perform, and display copyrighted works when they are not otherwise accessible.

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

These uses are necessary to make works accessible to people who have disabilities—uses that courts and Congress have recognized as noninfringing uses under fair use or Section 121 and 121A. If the Copyright Act would otherwise authorize uses that accommodate a disability in Sections 107-122, Section 1201 should not prevent those uses. Congress has never sought to use copyright law to interfere with this country's broad and compelling public policy commitment to create equal opportunities for people who have disabilities to participate in every aspect of society. In fact, Congress, when enacting Section 107, explicitly discussed the importance of fair use as a means to facilitating equitable access for people who have disabilities. Since then, Congress has also codified Sections 121 and 121A to broaden the set of noninfringing uses related to access for people who have disabilities. The Library and the Copyright Office should follow the United States' broad commitment to the civil rights of people with disabilities by ensuring that Section 1201 never interferes with non-infringing accessibility efforts.

The proposed exemption would account for new barriers to accessibility that materialize during the interim period of each triennial review by making clear that the widespread need for accessibility—particularly during a pandemic that has shifted much of America's educational, economic, and cultural activity to virtual spaces—can be met without waiting for years for the instantiation of the triennial review or the Office's lengthy review. Such an exemption would serve the core goals of the Americans with Disabilities Act and the Rehabilitation Act by ensuring that viewers, readers, and users of copyrighted works with disabilities can have some means of engaging in self-help or seeking the assistance of third parties to access those works on equal terms.

The proposed exemption would also allow people with disabilities, advocates, and organizations that produce accessible versions of copyrighted works protected by technological protection measures to press ahead on accessibility without the burden of engaging in a complex, situation-specific analysis. Having a single, broad exemption to supplement the existing exemptions related to accessibility will provide additional flexibility for the impacted parties to undertake accessibility uses without fear of liability under Section 1201.

In response to the Office's request for specified information that it finds most helpful:

- (1) The types of copyrighted works that need to be accessed are all cognizable classes of works under Section 102 (a) of the Copyright Act.
- (2) The physical media or devices on which the works are stored or the services through which the works are accessed are digital embodiments of the copyrighted works in these classes.
- (3) The purpose for which the works need to be accessed is to facilitate accessibility.
- (4) The types of users who want access to these copyrighted materials are people with disabilities.
- (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 include: (1) the access controls that inhibit accessibility and (2) failures of producers, publishers, and other rightsholders to authorize access for accessibility purposes or to produce accessible versions of their works. Many of these barriers have had an even greater impact on people with disabilities in the wake of COVID-19 and society's resulting shift to virtual work and education.