



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.

Association of Transcribers and Speech-to-Text Providers (ATSP)
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Represented by:
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Library Copyright Alliance (LCA)
 Represented by: Jonathan Band
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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.

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.

Association on Higher Education and Disability (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.

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.

Description of Proposed Exemption:

The above-referenced petitioners propose expanding the current exemption in 37 C.F.R. § 201.40(b)(2) for motion pictures (including television shows and videos) for use by an educational institution unit (“EIU”) engaged in and/or responsible for the provision of accessibility services to students. This exemption has had a significant positive impact over the period since the last triennial rulemaking, and its widespread use is a testament to its success. However, our unique first-hand understanding of how this exemption has been implemented has brought to our attention several issues with its current formulation that require updating in this triennial review.

The Copyright Office should recommend, and the Librarian of Congress should accept, expanding the language in the current exemption to address the need for remediation for faculty and staff, proactive remediation, “accessible versions” of sufficient quality, qualifying the commercial availability requirement, and reuse of remediated materials.

I. Remediation for Faculty and Staff

First, the exemption should be expanded to allow for the remediation of video for faculty and staff, as well as students. Subsection 2(i)(A) currently applies only to “students”—i.e., when “[c]ircumvention is undertaken . . . for the purpose of adding captions and/or audio description to a motion picture to create an accessible version as a necessary accommodation for a student or students with disabilities” (emphasis added). While the initial exemption was focused on students, EIUs report that they also need to remediate videos for access by faculty and staff members who rely on accommodations. The Office should recommend revising the subsection to read: “. . . for students, faculty, and staff with disabilities.” This more inclusive language will help ensure access to all people with disabilities involved in the educational process.

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

II. Proactive Remediation

Second, the exemption should facilitate the proactive remediation of video with captions and description. The exemption currently limits eligibility to remediation undertaken as “a necessary accommodation . . . under an applicable disability law, such as the Americans with Disabilities Act, the Individuals with Disabilities Education Act, or Section 504 of the Rehabilitation Act.” EIU’s have raised whether they can make use of the exemption proactively—for example, for materials that are commonly used in large classes that are likely to be the subject of future accommodation requests.

It is unclear, however, whether these proactive decisions are necessarily required by, or rather merely consistent with, applicable disability law. As a result, EIU’s erring on the side of caution have waited for actual accommodation requests before making a video accessible, causing unnecessary delays and complications for students who often must wait for the accommodation to be completed as a course is ongoing. The Office should recommend altering the current exemption language as necessary to make clear that EIU’s can create accessible versions proactively; for example, by removing the phrase “as a necessary accommodation” and adding “consistent with” after “student or students with disabilities” in subsection 2(i)(A).

III. “Accessible Versions” of Sufficient Quality

Third, the Office should clarify that the “reasonable effort” requirement in subsection (2)(i)(B) of the current exemption precludes circumvention only where an “accessible version” is available that contains captions and descriptions of sufficient quality to satisfy applicable disability law. The current exemption’s use of the term “accessible” does not specify what level of accessibility is satisfactory and simply specifies that it applies where “[t]he educational institution unit . . . has . . . determined that an accessible version cannot be obtained.”

EIU’s have encountered confusion about whether they can circumvent to remediate videos that are captioned or described but with errors that require further remediation. The Office could address this confusion by clarifying in its final recommendation that a version of a work with captions or descriptions of insufficient quality is not an “accessible version” under the meaning of subsection 2(i)(B), or by altering the exemption to add the term “of sufficient quality” after “accessible version.”

IV. Qualifying the Commercial Availability Requirement

Fourth, the Office should clarify the contours of the terms “reasonable effort” and “fair price” in subsection (2)(i)(B) (“The educational institution unit . . . has, after a reasonable effort, determined that an accessible version cannot be obtained at a fair price . . .” (emphasis added)). Questions have arisen about what an EIU must do to satisfy this “reasonable effort” obligation when no accessible version of a video included with a textbook exists, but a publisher might be willing to generate an accessible version of the video at extra cost. The Office should recommend adding limiting language to the exemption to clarify that an EIU has met the “reasonable effort” requirement when the publisher has not included an accessible version of the materials with a purchased textbook.

V. Reuse of Remediated Resources

Finally, the Office should clarify that the exemption enables EIU’s to reuse their stored accessible versions of videos. The exemption currently instructs EIU’s to “store” their accessible versions “in a manner intended to reasonably prevent unauthorized further dissemination of a work.” EIU’s have raised questions about whether the reuse of remediated resources for future accommodation requests is compliant with this exemption. As a result, EIU’s erring on the side of caution have had to re-remediate inaccessible resources and unnecessarily incur the cost of doing so each time a resource is requested in a future semester or term. Consequently, students have faced unnecessary delays and complications.

The Office should recommend altering the current exemption language to make clear that an EIU can reuse stored accessible versions instead of re-circumventing and re-remediating inaccessible media when complying with an accommodation request. The Office could achieve this result, for example, by adding the phrase “only for use or reuse for accessibility purposes, and” after “stored by the educational institution.”

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

Additional Information:

Our answers to the questions the Copyright Office asks are largely the same as our original petition, because the type of copyrighted work, purpose of the proposed expansion, and types of users wanting access echo those specified in the original exemption. In particular:

- (1) "The types of copyrighted works that need to be accessed" are motion pictures (including television shows and videos) as defined in 17 U.S.C. § 101;
- (2) "The physical media or devices on which the works are stored or the services through which the works are accessed" may include but are not limited to optical media, video cassettes with access control measures, and streaming services;
- (3) "The purposes for which the works need to be accessed" include making the works accessible to people with disabilities through the provision of accessibility features including closed and open captions and audio description;
- (4) "The types of users who want access" include units at educational institutions that are responsible for fulfilling those institutions' legal and ethical obligations to make works accessible to people with disabilities; 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" include limitations in the current exemption that foreclose non-infringing accessibility uses in the ways described above.