surface to bottom, encompassed by a line connecting the following points beginning at 25°0′47″ N, thence to 80°10′42″ N, thence to 25°0′47″ N, 80°10′44″ W, thence to 25°0′47″ N, 80°10′48″ W, thence to 25°46′55″ N, 80°10′48″ W, thence to 25°46′44″ N, 80°10′22″ W, thence to 25°46′50″ N, 80°10′18″ W and along the shoreline back to the beginning point. These coordinates are based on the WGS 84.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP) Sector Miami in the enforcement of the regulated area. *Participant* means all persons and vessels registered with the event sponsor as a participant in the race.

(c) *Regulations.* (1) All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the Captain of the Port Miami or their designated representative. No vessel traffic shall loiter within the intercoastal waterway and shall maintain course and speed.

(2) To seek permission to enter, contact the COTP or the COTP's representative on VHF–FM channel 16 or by telephone at (833) 642–7271. Those in the special regulated area must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) The COTP will provide notice of the regulated area through advanced notice via broadcast notice to mariners and by on-scene designated representatives.

(d) *Enforcement periods.* This section will be enforced on November 11, 2026, from 8 a.m. to 2 p.m., November 12, 2026, from 8 a.m. to 3:30 p.m., and November 13 through November 14, 2026, from 8 a.m. to 2 p.m.

**F.J. Florio,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Miami.*

[FR Doc. 2026–21949 Filed 10–27–26; 8:45 am]

**BILLING CODE 9110–04–P**

## LIBRARY OF CONGRESS

## Copyright Office

## 37 CFR Part 201

**[Docket No. 2026–4]**

## Exemptions To Permit Circumvention of Access Controls on Copyrighted Works

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The United States Copyright Office is conducting the tenth triennial rulemaking proceeding under the Digital Millennium Copyright Act (''DMCA''), concerning temporary exemptions to the DMCA's prohibition against circumvention of technological measures that control access to copyrighted works. Having carefully considered the petitions for new and renewal exemptions and comments received in response to the June 9, 2026 Notification of Inquiry, the Office announces the Register's intention to recommend all but one of the existing exemptions for renewal, and initiates three rounds of public comment on newly proposed exemptions. Comments submitted may not exceed twenty-five pages per class, excluding documentary evidence.

**DATES:** Initial written comments, along with any documentary or multimedia evidence, from proponents and other members of the public who support the adoption of a proposed exemption, as well as those that neither support nor oppose an exemption but seek to share pertinent information, are due December 7, 2026. Written response comments, along with any documentary or multimedia evidence, from those who oppose the adoption of a proposed exemption are due February 22, 2027. Written reply comments from supporters of a proposal and parties that neither support nor oppose a proposal are due March 22, 2027.

**ADDRESSES:** The Copyright Office is using the *regulations.gov* system for the submission and posting of comments in this proceeding. All comments are to be submitted electronically through *regulations.gov.* The Office is accepting two types of comments. First, commenters who wish briefly to express general support for or opposition to a proposed exemption may submit such comments electronically by typing into the comment field on *regulations.gov.* Second, commenters who wish to provide a fuller legal and evidentiary basis for their position may upload a Word or PDF document, but such longer submissions must be completed using the long comment form provided on the Office's website at *https://www.copyright.gov/1201/2027.* Specific instructions for submitting comments, including multimedia evidence that cannot be uploaded through *regulations.gov,* are available at *https://www.copyright.gov/1201/2027/comment-submission/.* If a commenter cannot meet a particular submission requirement, please contact the Office using the contact information below for special instructions.

**FOR FURTHER INFORMATION CONTACT:** Rhea Efthimiadis, Assistant to the General Counsel, by email at *USCOGeneralCounsel@copyright.gov* or by telephone at (202) 707–8350.

**SUPPLEMENTARY INFORMATION:** On June 9, 2026, the U.S. Copyright Office (''Office'') initiated the tenth triennial section 1201 rulemaking by publishing a Notification of Inquiry (''NOI'') and requesting petitions to renew current exemptions, comments responding to the renewal petitions, and petitions for newly proposed exemptions.[1] In response, the Office received 43 renewal petitions, three comments supporting renewal of an exemption, and eight comments opposing renewal of an exemption.[2] In addition, the Office received 25 petitions for new exemptions or for expansion of current exemptions.

This Notice of Proposed Rulemaking (''NPRM'') summarizes the renewal petitions and states which exemptions the Register of Copyrights (''Register'') intends to recommend for renewal without requiring petitioners to further develop the administrative record. Separately, this NPRM outlines the proposed classes for new exemptions for which the Office is initiating three rounds of public comment, including the one meaningfully opposed renewal petition that the Office will consider as a new petition.

### I. Standard for Evaluating Proposed Exemptions

As the NOI explained, before the Register can recommend a temporary

[1] 91 FR 34795 (June 9, 2026) (''NOI'').

[2] Renewal petitions, comments in response to renewal petitions, and petitions for new exemptions are available at *https://www.copyright.gov/1201/2027/.* References to renewal petitions and comments are by party name (abbreviated where appropriate) and a brief identification of the previously granted exemption, followed by either ''Renewal Pet.,'' ''Supp.'' (for comments supporting an exemption), or ''Opp.'' (for comments opposing an exemption). References to petitions for new exemptions are by party name (abbreviated where appropriate), the Office's proposed class number, and ''Pet.''

exemption from the prohibition on circumvention, the record must establish that ''persons who are users of a copyrighted work are, or are likely to be in the succeeding 3-year period, adversely affected by the [anti-circumvention] prohibition . . . in their ability to make noninfringing uses under [title 17] of a particular class of copyrighted works.'' [3] When defining a ''class of copyrighted works,'' the Office generally uses the categories of works in 17 U.S.C. 102 as a starting point and then refines the class by other criteria, such as the technological protection measures (''TPMs'') used, distribution platforms, and types of uses or users.[4]

In evaluating the evidence, the Register weighs the statutory factors in section 1201(a)(1)(C): ''(i) the availability for use of copyrighted works; (ii) the availability for use of works for nonprofit archival, preservation, and educational purposes; (iii) the impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research; (iv) the effect of circumvention of technological measures on the market for or value of copyrighted works; and (v) such other factors as the [Register] considers appropriate.'' [5] After the Office develops a comprehensive administrative record, the Register makes a recommendation to the Librarian of Congress (''Librarian'') concerning whether exemptions are warranted based on that record.

In considering whether to recommend an exemption consistent with the statutory text, the Register considers the question: ''*Are users of a copyrighted work adversely affected by the prohibition on circumvention in their ability to make noninfringing uses of a class of copyrighted works, or are users likely to be so adversely affected in the next three years?*'' [6] This inquiry breaks down into the following elements:

- Does the proposed class include at least some works protected by copyright?
- Are the uses at issue likely noninfringing under title 17?
- Are users currently, or likely to be, adversely affected in their ability to make such noninfringing uses during the next three years? [7]
- Is the statutory prohibition on circumventing access controls the cause of the adverse effects? [8]

To determine whether a proposed use is likely to be noninfringing, the Register considers the Copyright Act and relevant judicial precedents.[9] When considering whether such uses are being adversely impacted by the prohibition on circumvention, the rulemaking focuses on ''distinct, verifiable, and measurable impacts'' compared to ''*de minimis* impacts.'' [10] The Register examines the administrative record as a whole to consider whether the preponderance of the evidence shows that the conditions for granting an exemption have been met.[11]

## II. Review of Petitions To Renew Existing Exemptions

In this proceeding, the Office is again using the streamlined process, first adopted in the seventh triennial rulemaking, for the Register's recommendations of renewal of exemptions previously issued by the Librarian.[12] As the Office explained in its 2017 policy study, the ''Register must apply the same evidentiary standards in recommending the renewal of exemptions as for first-time exemption requests,'' and the statute requires that ''a determination must be made specifically for each triennial period.'' [13] The Office further determined that ''the statutory language appears to be broad enough to permit determinations to be based upon evidence drawn from prior proceedings, but only upon a conclusion that this evidence remains reliable to support granting an exemption in the current proceeding.'' [14] The Office has employed this process in each subsequent triennial rulemaking.

Renewal petitions must request readoption of exemptions as currently formulated, without modification. Petitions should support a determination by the Register that, due to a lack of legal, marketplace, or technological changes, the factors that led her to recommend adoption of the exemption in the prior rulemaking remain a reliable basis for the adoption of the exemption.[15] To the extent that a renewal petition proposes uses beyond the current exemption or language that varies from the exemption as currently enacted, the Office disregards those portions of the petition for purposes of considering the renewal of the exemption, and asks only whether the petition provides sufficient information

[3] 17 U.S.C. 1201(a)(1)(C).

[4] *See* U.S. Copyright Office, Section 1201 Rulemaking: Ninth Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention, Recommendation of the Register of Copyrights 13–14 (2024) (''2024 Recommendation''), *https://www.copyright.gov/1201/2024/2024_Section_1201_Registers_Recommendation.pdf;* U.S. Copyright Office, Section 1201 of Title 17, at 26, 108–10 (2017) (''Section 1201 Study''), *https://www.copyright.gov/policy/1201/section-1201-full-report.pdf; see also* H.R. Rep. No. 105–551, pt. 2, at 38 (1998) (''Commerce Comm. Report'') (''The Committee intends that the 'particular class of copyrighted works' be a narrow and focused subset of the broad categories of works of authorship than is identified in Section 102 of the Copyright Act (17 U.S.C. [section] 102).'').

[5] 17 U.S.C. 1201(a)(1)(C).

[6] Section 1201 Study at 114.

[7] This element is analyzed in reference to section 1201(a)(1)(C)'s five statutory factors.

[8] Section 1201 Study at 115–27.

[9] *Id.* at 115–17. While controlling precedent directly on point is not required to justify an exemption, there is no ''rule of doubt'' favoring an exemption when it is unclear that a particular use is fair or otherwise noninfringing. *See* U.S. Copyright Office, Section 1201 Rulemaking: Sixth Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention, Recommendation of the Register of Copyrights 15 (2015) (''2015 Recommendation''), *https://cdn.loc.gov/copyright/1201/2015/registers-recommendation.pdf.* The rulemaking also generally ''is not an appropriate venue for breaking new ground in fair use jurisprudence.'' U.S. Copyright Office, Section 1201 Rulemaking: Eighth Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention, Recommendation of the Register of Copyrights 10–11 (2021) (''2021 Recommendation''), *https://cdn.loc.gov/copyright/1201/2021/2021_Section_1201_Registers_Recommendation.pdf* (quoting Section 1201 Study at 116–17).

[10] Commerce Comm. Report at 37; *see also* Staff of H. Comm. on the Judiciary, 105th Cong., Section-by-Section Analysis of H.R. 2281 as Passed by the United States House of Representatives on August 4th, 1998, at 6 (Comm. Print 1998) (using the equivalent phrase ''substantial adverse impact''); *see also, e.g.,* Section 1201 Study at 119–21 (discussing same and citing application of this standard in five prior rulemakings).

[11] *See* 17 U.S.C. 1201(a)(1)(C) (asking whether users ''*are, or are likely to be* in the succeeding 3-year period, adversely affected by the prohibition [on circumvention] in their ability to make noninfringing uses'' (emphasis added)); Section 1201 Study at 111–12; *see also Sea Island Broad. Corp.* v. *FCC,* 627 F.2d 240, 243 (D.C. Cir. 1980) (noting that ''[t]he use of the 'preponderance of evidence' standard is the traditional standard in civil and administrative proceedings''); 70 FR 57526, 57528 (Oct. 3, 2005); 2021 Recommendation at 7–8; U.S. Copyright Office, Section 1201 Rulemaking: Seventh Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention, Recommendation of the Acting Register of Copyrights 13 (2018) (''2018 Recommendation''), *https://cdn.loc.gov/copyright/1201/2018/2018_Section_1201_Acting_Registers_Recommendation.pdf;* 2015 Recommendation at 13–14; U.S. Copyright Office, Section 1201 Rulemaking: Fifth Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention, Recommendation of the Register of Copyrights 6 (2012) (''2012 Recommendation''), *https://cdn.loc.gov/copyright/1201/2012/Section_1201_Rulemaking_Recommendation.pdf;* U.S. Copyright Office, Section 1201 Rulemaking: Second Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention, Recommendation of the Register of Copyrights 19–20 (2003) (''2003 Recommendation''), *https://cdn.loc.gov/copyright/1201/docs/registers-recommendation.pdf.*

[12] 2018 Recommendation at 17, 19, 22 (explaining the streamlined renewal process and how the Office was able to recommend renewal of all previously granted exemptions, since each then-current exemption was renewed and not meaningfully contested).

[13] Section 1201 Study at 142, 145.

[14] *Id.* at 143.

[15] *See id.* at 143–44.

to warrant renewal of the exemption in its current form.

In response to its current NOI, the Office received petitions to renew every existing exemption. Each of the forty-three renewal petitions included a summary of the basis for the continuing need and justification for the exemption. Each petitioner also signed a declaration stating that, to the best of their personal knowledge, there has not been any material change in the facts, law, or other circumstances set forth in the prior rulemaking record such that renewal of the exemption would not be justified. This sworn declaration also includes a statement that, based on their personal knowledge and experience, petitioners believe that if the exemption were not renewed, users would be diminished in their ability to make use of the works at issue.[16]

The Office received eleven comments in response to the renewal petitions, three of which support renewal of specific exemptions. Eight comments oppose certain aspects of the renewal petitions.[17]

As detailed below, after reviewing the petitions for renewal and comments in response, the Office finds that it has received a sufficient petition for each of the existing exemptions. The Office finds meaningful opposition to renewal of one exemption (the current medical device repair exemption); it will not grant this exemption through the streamlined renewal process but will instead allow interested parties to develop the record further so that it can be considered as a new proposed exemption in the regular rulemaking process. The Register intends to recommend readoption of each of the other existing exemptions in their current forms.

### *A. Audiovisual Works—Criticism and Comment—Filmmaking*

International Documentary Association and Kartemquin Educational Films (collectively ''Joint Filmmakers'') jointly petition to renew the exemption for motion pictures [18] for uses in documentary films or other films where the use is a parody or for a biographical or historically significant nature (codified at 37 CFR 201.40(b)(1)(i)(A)).[19] No comments were filed opposing renewal.

Joint Filmmakers represent thousands of independent filmmakers across the nation and have participated in every triennial rulemaking since 2008. They state that TPMs such as encryption continue to prevent filmmakers from accessing needed material, and that this is ''especially true for the kind of high fidelity motion picture material filmmakers need to satisfy both distributors and viewers.'' [20] Petitioners state their firsthand knowledge that filmmakers have found it necessary to rely on this exemption and will continue to do so.[21]

Based on the information provided in the renewal petition and the lack of opposition, the Office concludes that the conditions that led to the adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Register intends to recommend renewal.

### *B. Audiovisual Works—Criticism and Comment—Noncommercial Videos*

The Organization for Transformative Works (''OTW'') petitions to renew the exemption for motion pictures for use in noncommercial videos (codified at 37 CFR 201.40(b)(1)(i)(B)).[22] OTW, which has advocated for the noncommercial video exemption in past triennial rulemakings, states it has heard from ''a number of noncommercial remix artists'' who have used the exemption in the past and anticipate needing to use it in the future as well as the increasing cultural and political importance of ''fan edits.'' [23]

OTW states that ''creators continue to make video remixes using DVD and Blu-Ray source[s]'' for several reasons, such as engaging in ''valuable commentary'' and that the ''fundamental conditions surrounding video remix have not changed'' in the preceding three-year period.[24] No comments were filed opposing renewal of the exemption as currently formulated.

The Office did, however, receive opposition to OTW's renewal petition to the extent it seeks to modify the regulatory language of this exemption. As in the previous proceeding, OTW's renewal petition proposes the Office ''us[e] the relatively simple language defining the exempted class from the 2008 rulemaking,'' rather than the exact language in the current exemption, which was adopted in the 2021 rulemaking.[25] The Entertainment Software Association, Motion Picture Association, and Recording Industry Association of America (collectively ''Joint Creators'') jointly oppose OTW's petition to the extent that it requests modification of the exemption's language, arguing the request constitutes an expansion and should therefore be properly submitted as a petition for a new exemption.[26] The Office agrees. Such a modification cannot be granted via the streamlined exemption renewal procedure and must instead be petitioned for as a new exemption.[27] OTW did not submit a separate new exemption petition for its proposed modifications. Therefore, OTW's renewal petition will be considered only to the extent that it requests readoption of the current exemption; its proposed modifications cannot be considered in this triennial proceeding.

Based on the information provided in the renewal petition and the lack of meaningful opposition, the Office concludes that the conditions that led to the adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Register intends to recommend renewal.

### *C. Audiovisual Works—Criticism and Comment—Multimedia E-Books*

Authors Alliance and independent film producer and author, Bobette Buster, filed a joint petition to renew the exemption for the use of motion picture excerpts in nonfiction multimedia e-books (codified at 37 CFR 201.40(b)(1)(i)(C)).[28] No comments were filed opposing renewal.

Petitioners point to Professor Buster's continuing work authoring film education e-books, which rely on the ''essential'' use of high-resolution video that would not be available ''without the circumvention of technological protection measures.'' [29] In addition to the e-book series titled ''Deconstructing Master Filmmakers'' discussed in previous rulemakings, Professor Buster

[16] 82 FR 29804, 29806 (June 30, 2017).

[17] *See, e.g.,* Entertainment Software Association, Motion Picture Association & Recording Industry Association of America (collectively ''Joint Creators'') Noncom. Videos Opp.; Association of American Publishers (''AAP'') TDM Opp.; Alliance for Automotive Innovation (''Auto Innovators'') Vehicle Repair Opp.; Auto Innovators Vehicle Data Opp.; Advance Medical Technology Association (''AdvaMed'') Medical Device Repair Opp. #1; AdvaMed Medical Device Repair Opp. #2; Joint Creators Medical Device Repair Opp.; Philips North America, LLC (''Philips'') Medical Device Repair Opp.

[18] Unless otherwise noted, all references to motion pictures as a category include television programs and videos.

[19] Joint Filmmakers Documentary Films Renewal Pet.

[20] *Id.* at 4.

[21] *Id.*

[22] OTW Noncom. Videos Renewal Pet.

[23] *Id.* at 4–5.

[24] *Id.*

[25] *Id.* at 6. OTW describes its requested change to the exemption language as ''not . . . an expansion of the existing exemption, but a more understandable restatement.'' *Id.*

[26] Joint Creators Noncom. Videos Opp. at 1–2.

[27] *See* NOI at 34797 (''Only petitions requesting renewal of current exemptions as currently written in the *Code of Federal Regulations,* without modification, may be considered under the streamlined renewal procedure.'').

[28] Buster & Authors Alliance Nonfiction Multimedia E-Books Renewal Pet.

[29] *Id.* at 4.

newly references her lecture series titled ''How to Tell Your Story Well,'' ''What's the Big Idea,'' and ''Satire and the Shaping of American Culture'' and states that she uses the lectures' source material—''particularly film clips that are the subject of this exemption''—in e-book projects that are part of this ''broader work in deconstructing feature-length films in-depth.'' [30] Such contemporary evidence of the ongoing need for the exemption combined with petitioners' participation in the last four triennial rulemakings, provide a sufficient basis for renewal of the current exemption.[31]

Based on the information provided in the renewal petition and the lack of opposition, the Office concludes that the conditions that led to the adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Register intends to recommend renewal.

*D. Audiovisual Works—Criticism and Comment—Universities and K–12 Educational Institutions*

Peter Decherney, John Jackson, Sarah Banet-Weiser, Library Copyright Alliance (''LCA''), and Society for Cinema and Media Studies (''SCMS'') (collectively ''Joint Educators'') jointly petition to renew the exemption for the use of motion picture excerpts for educational purposes by college and university faculty, students, or employees, or K–12 educators and students (codified at 37 CFR 201.40(b)(1)(ii)(A)).[32] Brigham Young University-Idaho (''BYU-Idaho'') filed a comment in support of renewal,[33] and no comments opposing renewal were filed.

Joint Educators provide several contemporary examples of educators and students using film clips for educational purposes including class presentations and coursework. Co-petitioner Decherney declares that he ''continues to teach courses every semester that require[s] students to create video essay[s],'' which are ''piece[s] of video-based criticism or scholarship that makes an argument through the audiovisual medium itself'' that are subsequently presented for comment and discussion.[34] Joint Educators also point to an increase of multimedia criticism in the classroom, with educators ''treating film clips and other media not as illustrations of a written argument but as evidence and analytic tools in their own right,'' and ''build[ing] a lecture or seminar around close analysis of scenes from documentaries, news footage, or television dramas.'' [35] In this rulemaking and through their participation in previous triennial rulemakings, petitioners have represented thousands of digital and literacy educators and/or members supporting educators and students. Joint Educators again suggest that the ''entire field'' of video essays or multimedia criticism ''could not have existed in the United States without fair use and the 1201 educational exemption.'' [36]

Based on the information provided in the renewal petition and the lack of opposition, the Office concludes that the conditions that led to the adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Register intends to recommend renewal.

*E. Audiovisual Works—Criticism and Comment—Massive Open Online Courses (''MOOCs'')*

Joint Educators also petition to renew the exemption for motion pictures for educational uses in MOOCs (codified at 37 CFR 201.40(b)(1)(ii)(B)).[37] No comments opposing renewal were filed, and BYU-Idaho filed a comment in support of renewal.[38]

The petition states that instructors continue to rely on the exemption to ''develop, provide, and improve MOOCs,'' as well as increase the number of (and therefore access to) MOOCs, particularly in the field of film and media studies.[39] Joint Educators note the impact of Professor Decherney's History of Hollywood class, which ''offers close readings of Hollywood classics like'' *King Kong* and *Casablanca* and ''analyzes digital special effects, sound design, and other elements of filmmaking''—reaching almost 80,000 students.[40] The petition also states that the exemption's relevance and use has flourished since the COVID–19 pandemic and the ''universal continuing shift of our education systems to online learning,'' which has resulted in increased MOOCs offerings and enrollment.[41]

Based on the information provided in the renewal petition and the lack of opposition, the Office concludes that the conditions that led to the adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Register intends to recommend renewal.

*F. Audiovisual Works—Criticism and Comment—Digital and Media Literacy Programs*

LCA petitions to renew the exemption for motion pictures for educational uses in nonprofit digital and media literacy programs offered by libraries, museums, and other nonprofits (codified at 37 CFR 201.40(b)(1)(ii)(C)).[42] No comments opposing renewal were filed, and BYU-Idaho filed a comment in support of renewal.[43]

LCA, whose member associations comprise ''over 100,000 libraries in the United States,'' states in its petition that librarians, museums, and other nonprofit entities across the country have relied on the current exemption and will continue to do so for their digital and media literacy programs.[44] Noting that LCA has participated in every previous triennial rulemaking, including several related to this particular exemption, the petition states that LCA has a high degree of familiarity with the relevant standards.[45] It states that libraries, museums, and other nonprofit entities ''will continue to need to circumvent technological protections so as to enable noninfringing uses of motion pictures in their digital and literacy programs.'' [46]

Based on the information provided in the renewal petition and the lack of opposition, the Office concludes that the conditions that led to the adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Register intends to recommend renewal.

[30] *Id.* (explaining that Professor Buster ''uses extracts of [her popular] lecture[ ] [series] as the basis of digital publications, which include[ ] projects to create ebooks featuring source materials from [those] lectures, particularly film clips that are the subject of this exemption'').

[31] *See* NOI at 34797 n.19; *see also* 88 FR 72013, 72016 n.35 (Oct. 19, 2023) (same).

[32] Joint Educators AV Educ. Renewal Pet.

[33] BYU-Idaho AV Educ. Supp. BYU-Idaho filed a single comment in support of ''renewal of the current exemption in 37 [CFR section] 201.40(b)(1) for audiovisual works used for educational purposes by college and university faculty and students.'' *Id.* at 1. The Office understands this comment to support the three exemptions codified at 37 CFR 201.40(b)(1)(ii). *See id.* (referencing 37 CFR 201.40(b)(1)(ii)(A)–(C)). BYU-Idaho's comment also requests that the Office replace portions of the text of the current exemption for the purpose of clarification. *Id.* at 2–3. Such a request is properly submitted as a petition for a new exemption during the petition phase of the rulemaking process and is therefore not considered here. *See* NOI at 34797.

[34] Joint Educators AV Educ. Renewal Pet. at 4.

[35] *Id.*

[36] *Id.; see* 2024 Joint Educators AV Educ. Renewal Pet. at 3 (same).

[37] Joint Educators AV Educ. MOOCs Renewal Pet.

[38] BYU-Idaho AV Educ. Supp.

[39] Joint Educators AV Educ. MOOCs Renewal Pet. at 4.

[40] *Id.*

[41] *Id.*

[42] LCA AV Educ. Nonprofits Renewal Pet.

[43] BYU-Idaho AV Educ. Supp.

[44] LCA AV Educ. Nonprofits Renewal Pet. at 4.

[45] *Id.*

[46] *Id.*

*G. Audiovisual Works—Captioning and Audio Description*

The Association on Higher Education and Disability (''AHEAD''), LCA, and KeriAnn Hollerud jointly petition to renew the exemption for motion pictures 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 (codified at 37 CFR 201.40(b)(2)).[47] No comments were filed opposing renewal.

Petitioners assert that students with disabilities continue to rely on the exemption, stating that disability services professionals and supporting entities, such as libraries, ''have used the exemption to address the requests and concerns of students with disabilities in attendance at their respective educational institutions to create equitable educational experiences,'' ''ensur[ing] that students with disabilities have access to the same advantages as their peers in the pursuit of education.'' [48] ''Based on their regular interaction with those affected by the exemption,'' petitioners believe that the circumstances justifying the exemption currently exist and will persist for the next three years.[49]

Based on the information provided in the renewal petition and the lack of opposition, the Office concludes that the conditions that led to the adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Register intends to recommend renewal.

*H. Audiovisual Works—Preservation or Replacement—Library, Archives, and Museum*

LCA petitions to renew the exemption for motion pictures for preservation or the creation of a replacement copy by an eligible library, archives, or museum (codified at 37 CFR 201.40(b)(3)).[50] No comments were filed opposing renewal.

LCA, which participated in the triennial rulemakings that granted the initial and renewal exemptions, states in its petition that ''[c]ultural heritage institutions across the country have relied on the exemption . . . to make preservation and replacement copies of the motion pictures in their collections stored on DVDs and Blu-ray discs.'' [51] The petition further notes that many motion pictures in its over 100,000 member libraries' collections ''are unavailable for purchase or streaming'' or ''continue to deteriorate,'' demonstrating the need to engage in such preservation efforts.[52]

Based on the information provided in the renewal petition and the lack of opposition, the Office concludes that the conditions that led to the adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Register intends to recommend renewal.

*I. Audiovisual Works—Text and Data Mining—Scholarly Research and Teaching*

Authors Alliance and LCA jointly petition to renew the exemption for text and data mining (''TDM'') of motion pictures by researchers affiliated with a nonprofit institution of higher education, or at the direction of such researchers, for the purpose of scholarly research and teaching (codified at 37 CFR 201.40(b)(4)).[53] No comments were filed opposing renewal.

The petition reports that this ''exemption has enabled ambitious research agendas that have resulted in published scholarship,'' citing a study published in *PNAS* analyzing diversity in Hollywood and other ongoing projects.[54] ''Many researchers are now actively relying on'' the exemption for their research, including those at ''large research-intensive institutions, such as Stanford University, UC Berkeley, the University of Chicago, [and] Dartmouth.'' [55] Authors Alliance and LCA claim ''an increasingly broad group of researchers from smaller and less research-intensive institutions'' like Haverford College and Hofstra University ''have expressed interest in using the new exemption.'' [56]

According to the petition, ''academic researchers need to assemble and annotate their own research corpora,'' and will continue to need to do so.[57] The petition further states that the relevant case law has not changed and although ''[c]ommercially licensed text and data mining products continue to be made available to research institutions,'' such products ''do not allow researchers to license the full array of films needed to engage in the research they seek to do, and those works remain protected from copying by'' TPMs.[58] Finally, the petition notes that the exemption excludes compilations licensed for institutional TDM research.[59]

Based on the information provided in the renewal petition and the lack of opposition, the Office concludes that the conditions that led to the adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Register intends to recommend renewal.

*J. Literary Works—Text and Data Mining—Scholarly Research and Teaching*

Authors Alliance and LCA also jointly petition to renew the exemption for text and data mining of literary works distributed electronically, conducted by researchers affiliated with a nonprofit institution of higher education, for the purpose of scholarly research and teaching (codified at 37 CFR 201.40(b)(5)).[60] The Association of American Publishers (''AAP'') submitted a comment in opposition.

This petition parallels the petition for text and data mining of audiovisual works, submitted by the same joint petitioners. Petitioners, who have communicated with ''well over a thousand researchers, librarians, and other academic faculty'' as part of their outreach to digital humanities research communities, state these researchers are ''now actively relying on the TDM exemption in their research.'' [61] Petitioners assert ''[t]he exemption has contributed to the growing field of the digital humanities . . . [and] has enabled discrete research projects as well as the development of new research methods.'' [62] Acknowledging that ''[c]ommercially licensed [TDM] products continue to be made available to research institutions,'' petitioners nonetheless state that these products do not provide researchers access to the ''full array of texts needed'' to conduct their research.[63] Because researchers actively rely on the current exemption, and because ''there are no material changes in facts, law, technology, or other circumstances that would justify failing to renew it,'' petitioners seek to renew the exemption in this cycle.[64]

AAP's comment opposing renewal contends that the previous rulemaking

[47] AHEAD, LCA & Hollerud Captioning Renewal Pet.

[48] *Id.* at 4.

[49] *Id.*

[50] LCA Preservation Renewal Pet.

[51] *Id.* at 4.

[52] *Id.*

[53] Authors Alliance & LCA AV Text and Data Mining Renewal Pet.

[54] *Id.* at 4 (citing David Bamman et al., *Measuring Diversity in Hollywood Through the Large-Scale Computational Analysis of Film,* 121 Proc. Nat'l Acad. Sciences, no. 46 (Nov. 4, 2024), *https://doi.org/10.1073/pnas.2409770121*).

[55] *Id.*

[56] *Id.*

[57] *Id.*

[58] *Id.*

[59] *Id.*

[60] Authors Alliance & LCA LW Text and Data Mining Renewal Pet.

[61] *Id.* at 4.

[62] *Id.* (citing Digital Humanities 2025: Book of Abstracts (Gimena Riande et al. eds., 2025), *https://zenodo.org/records/19494802*).

[63] *Id.*

[64] *Id.*

record has become unreliable due to factual developments.[65] AAP first argues that market solutions for researchers to access large corpora of rights-cleared works have emerged in recent years, obviating the need for circumvention and undermining the finding in past rulemakings that researchers lack alternatives to circumvention.[66] AAP lists several services through which publishers offer their works for use in TDM research, stating that a ''wide array of prominent nonprofit research institutions of higher education have already adopted [these services] as a library service to facilitate TDM research, including Columbia University, University of Washington, University of Chicago, Brown University, and University of Oxford.'' [67] AAP also argues that the exemption has had the unintended consequence of contributing to the use of unlawfully acquired works for TDM, asserting that some researchers have scraped pirate sites for TDM research, and that ''concerns that unprotected corpora created under the exemption will be siphoned off to train generative [artificial intelligence (']AI[')] models'' have been heightened.[68]

The growth in licensed options for text and data mining that AAP describes is an important consideration to the extent that it obviates the need for the exemption.[69] While petitioners and opponents agree that such growth has occurred since the last triennial rulemaking proceeding, the evidence AAP provides relates only to a small subset of the works used for TDM research. Even with access to the new options AAP describes, researchers would not have access to the full array of works currently covered by the exemption in the absence of renewal. Accordingly, these developments do not show that the prior rulemaking record no longer reliably supports renewal. For instance, the record does not show that contemporary, in-copyright literary works (like mass market fiction) are now available for licensed TDM use. In 2021, the Register found that the research and teaching the TDM exemption supports can require this type of works: ''But for the prohibition on circumvention, researchers would be able to perform TDM techniques on contemporary literary works . . . and teach those techniques in their courses.'' [70] Proponents explained that TDM research on literary works had ''typically only been done on works that are in the public domain,'' [71] and that the inability to conduct TDM apart from public domain texts contributed to existing biases within the field.[72] The Register also found that the offerings of digital libraries like HathiTrust ''are insufficient to allow researchers to conduct [this] type of research'' in part because of ''substantial gaps in its collection,'' which ''contains a greater proportion of academic monographs than mass-market fiction.'' [73] The inability to use contemporary literary works to teach engaging lessons on TDM was an issue that many academics raised.[74] The Register found that the new exemption would ''enable professors to teach TDM techniques to students using contemporary, diverse, and inclusive works.'' [75] In 2024, the Register found that the Copyright Clearance Center's RightFind service, which licenses journal articles for text and data mining, was not a ''serious alternative to circumvention . . . due to the relatively limited scope of the materials it licenses.'' [76]

AAP does not identify the works that the publisher and platform offerings it cites make available for TDM research. The services it describes—API access from Wiley, Springer Nature, and Elsevier—are offered by scholarly and scientific publishers. Their offerings are of the same nature as the journal article licensing the Register found inadequate for these TDM research uses in 2024,[77] although no doubt enormously powerful for mining the scientific, technical, and medical literature those publishers produce. The collection AAP describes most specifically, the twenty-five million pages of historical archival materials in History Vault that ProQuest recently added to its TDM Studio product,[78] does not supply what the prior record documented researchers could not obtain. The valuable addition of vast amounts of archival materials to the scholarly and scientific platforms detailed by AAP still do not make these platforms adequate alternatives for large swaths of the research being conducted under this exemption.[79]

AAP's other arguments raise concerns about conduct that is outside of the scope of the exemption. While the Office understands the seriousness of unlawful acquisition and use of copyrighted works—and shares in AAP's concern about such risks—the exemption is written to specifically exclude such conduct. To the extent there is any doubt, we reaffirm here that the exception does not permit or sanction these types of acts.

AAP's comment does not provide support for its contention that the exemption is ''providing inadvertent cover'' for the use of unlawfully acquired literary works.[80] AAP's single example, a project in which researchers in France downloaded millions of e-books from pirate sites, does not involve circumvention let alone rely on a 1201 exemption. The catalog the researchers released ''reproduces no textual content from the underlying books.'' [81] Additionally, this project does not appear to satisfy the exemption's requirement that works be ''lawfully acquired and owned by the institution, or licensed to the institution without a time limitation on access,'' [82] as the researchers themselves describe their work as ''harvesting and computing data from shadow libraries.'' [83] AAP does not argue otherwise, and it does not contend that the project qualified for the exemption.[84]

[65] AAP LW Text and Data Mining Opp. at 1–2.

[66] *Id.* at 2–5.

[67] *Id.* at 3.

[68] *Id.* at 5–8.

[69] The exemption excludes from its scope compilations that were compiled specifically for TDM purposes. 37 CFR 201.40(b)(5)(i) (stating that the exemption involves ''[l]iterary works, excluding . . . compilations that were compiled specifically for text and data mining purposes'').

[70] 2021 Recommendation at 117.

[71] *Id.* at 104.

[72] 2021 Authors Alliance/American Association of University Professors (''AAUP'')/LCA Class 7 Initial at 9 (quoting App. O at 2 (letter from Melanie Walsh)).

[73] 2021 Recommendation at 117–18 (citing evidence that HathiTrust has proportionally fewer romance and science fiction).

[74] *See* 2021 Authors Alliance/AAUP/LCA Class 7 Initial at 31, Apps. B–P.

[75] 2021 Recommendation at 120.

[76] 2024 Recommendation at 88.

[77] AAP LW Text and Data Mining Opp. at 3; *see* 2024 Recommendation at 88.

[78] AAP LW Text and Data Mining Opp. at 3.

[79] *See* 2024 Recommendation at 88 (''credit[ing] proponents' explanation that the licensing options identified by AAP are not suitable for the type of research at issue'').

[80] AAP LW Text and Data Mining Opp. at 6.

[81] Antoine Mazières & Thierry Poibeau, *MajinBook: An Open Catalogue of Digitally Mediated World Literature,* 11 J. Cultural Analytics 2, 17 (2026), *https://culturalanalytics.org/article/id/1164/.* The researchers converted pirated e-books to text, matched them to Goodreads records, and released a catalog listing the matched books (not the text of the works). Additionally, the researchers state that they did not circumvent the only technological measures referenced—those on the Goodreads website. *See id.* at 18.

[82] 37 CFR 201.40(b)(5)(i)(B).

[83] AAP LW Text and Data Mining Opp. at 6 (quoting Mazières & Poibeau, *supra* note 81 at 18).

[84] *Id.* & n.27. Nor do the French researchers suggest that the 1201 exemption applies to their work. Instead, they generally reference the exemption as one of several possible lenses through which to consider projects similar to their own. *See id.* (quoting *Mazières & Poibeau, supra* note 81 at 18) (asserting that ''harvesting and computing data from shadow libraries as [they] did can be considered through the lens of several legal frameworks: In the EU, the above-mentioned 'TDM exception', and in the U.S., the fair use doctrine incorporated into the Copyright Act of 1976

Continued

AAP's suggestion that ''unprotected corpora created under the exemption will be siphoned off to train generative AI models,'' also refers to risks outside the scope of the exemption.[85] As AAP acknowledges, circumventing TPMs to compile AI model training data sets is permitted by the exemption. The exemption requires research institutions to implement ''effective security measures'' to prevent non-exempted uses and to ''limit[] access to the corpus to only'' researchers at nonprofit institutions.[86] AAP does not identify any instances of the security measures protecting a corpus compiled under the exemption being breached or a corpus being used for training generative AI. This serious but unsubstantiated possibility therefore does not provide a basis for the Register to refuse to recommend renewing the exemption.

After reviewing the renewal petition, the opposition comment, and the record from the previous rulemakings, the Register concludes that the prior record provides a sufficient basis for renewal. Contrary to AAP's assertion, Authors Alliance and LCA state in their petition that ''[c]ommercially licensed [TDM] products continue to be made available to research institutions'' but ''these licensed products do not allow researchers to license the full array of texts needed to engage in the research they seek to do.'' [87] Because the conditions that led to the adoption of this exemption are likely to continue during the next triennial period, the Register intends to recommend renewal.

*K. Literary Works—Assistive Technologies*

The American Council of the Blind (''ACB''), American Foundation for the Blind (''AFB''), and LCA (collectively ''Accessibility Petitioners'') jointly petition to renew the exemption for literary works or previously published musical works that have been fixed in the form of text or notation whose technological measures interfere with assistive technologies (codified at 37 CFR 201.40(b)(6)).[88] No comments were filed opposing renewal.

Petitioners advocate for individuals with print disabilities and have direct experience with the assistive technology exemption, as they have participated in every proceeding in which this exemption has been considered. The petition asserts that individuals who are blind, visually impaired, or print disabled are significantly disadvantaged with respect to obtaining accessible e-book content because TPMs interfere with the use of assistive technologies.[89] Specifically, petitioners state that ''many e-books have built-in security software that prevents purchasers and other third parties from utilizing them outside of publisher-designated e-book reader platforms'' and that ''[t]he availability of non-circumventing alternatives, such as audiobook and Braille versions provided by publishers, remains limited.'' [90] Petitioners also note that the record underpinning the exemption ''has stood and been re-established in the past eight triennial reviews dating back to 2003'' and that the ''accessibility of e-books is frequently cited as a top priority'' by its members.[91]

Based on the information provided in the renewal petition and the lack of opposition, the Office concludes that the conditions that led to the adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Register intends to recommend renewal.

*L. Literary Works—Medical Device Data*

The Coalition of Medical Device Patients and Researchers (''Coalition'') petition to renew the exemption covering access to patient data on medical devices or monitoring systems (codified at 37 CFR 201.40(b)(7)).[92] No comments were filed opposing renewal.

The petition states that patients continue to need access to data output from their medical devices to manage their health and react to their medical data in real-time, which the current exemption facilitates.[93] In addition to noting their experience with the exemption through participation in past rulemakings, petitioners provided contemporary examples of the barriers to and need for obtaining access to their medical devices' data outputs.[94] One member attests that, without the exemption, he would be unable to access personal data recorded by his home life-support ventilator.[95] Another member describes how the manufacturer of her implanted defibrillator has significantly reduced its U.S. presence over time, making it difficult to access representatives with the expertise required to retrieve health information from the device or to modify the device's operation to address her changing medical needs.[96]

Based on the information provided in the renewal petition and the lack of opposition, the Office concludes that the conditions that led to the adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Register intends to recommend renewal.

*M. Computer Programs—Unlocking*

The Recycled Materials Association (''ReMA'') petitions to renew the exemption for computer programs that operate wireless devices, to allow connection of the device to an alternative wireless network (''unlocking'') (codified at 37 CFR 201.40(b)(8)).[97] No comments were filed opposing renewal.

ReMA, with over 1,700 member companies that recycle, refurbish and repair electronic products, reports its members, who rely on the ability to unlock cellphones for re-purposing them, continue to receive wireless products locked to a particular wireless carrier.[98] Moreover, ReMA notes that the number of 5G-enabled device types has continued to grow—nearly tripling since the previous rulemaking; this means that there are many more types of devices that may require unlocking.[99] ReMA states that its members continue to acquire cell phones, tablets, and other wireless devices for reuse, but that wireless carriers still lock devices to prevent them from being used on other carriers.[100]

Based on the information provided in the renewal petition and the lack of opposition, the Office concludes that the conditions that led to the adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Register intends to recommend renewal.

*N. Computer Programs—Jailbreaking*

The Office received multiple petitions to renew the four exemptions that permit enabling electronic devices to interoperate with or to remove software

complemented by the recent Text and Data Mining exemption to the Digital Millennium Copyright Act (1998).''). The researchers, who describe themselves as ''nonlegal scholars,'' go on to concede that the application of the cited frameworks was ''beyond the scope'' of their work. *Id.* at 18.

[85] *Id.* at 7.

[86] 37 CFR 201.40(b)(5)(i)(D)–(E).

[87] Authors Alliance & LCA LW Text and Data Mining Renewal Pet. at 4.

[88] Accessibility Petitioners Assistive Technologies Renewal Pet.

[89] *Id.* at 4.

[90] *Id.*

[91] *Id.*

[92] Coalition Medical Devices Renewal Pet.

[93] *Id.* at 4.

[94] *Id.*

[95] *Id.*

[96] *Id.*

[97] ReMA Unlocking Renewal Pet. In 2024, the Institute of Scrap Recycling Industries, Inc. (''ISRI'') ''rebranded itself and began operating under a new dba, the Recycled Materials Association (ReMA).'' *Id.* at 4.

[98] *Id.* at 4–5.

[99] *Id.* at 4. ReMA has participated in these rulemaking proceedings ''over multiple cycles.'' *Id.*

[100] *Id.* at 4–5.

applications (''jailbreaking'') (codified at 37 CFR 201.40(b)(9)–(12)).[101] No comments opposing renewal were filed.

The renewal petitions provide evidence of the continuing need and justification for the four jailbreaking exemptions. Regarding smartphones and other portable mobile computing devices, EFF asserts that it ''heard from many device users who currently rely on the jailbreaking exemption and anticipate continuing to rely on the exemption in the future'' for uses such as installing an alternative operating system, maintaining functionality of older devices, and installing custom applications developed outside of official app store processes.[102] As to smart televisions, SFC states that ''at least one Smart TV platform (SmartCast) ship[s] to the consumer in a 'locked' format, which prevent[s] users from loading third-party software to enable interoperability.'' [103] As to voice assistant devices, EFF explains some users of voice assistant devices wish to expand the devices' functionality by installing updated software, or by installing ''privacy-first'' software alternatives to limit personal data collection.[104] Lastly as to routers, SFC states that based on its observations, there is a continued need to install alternative firmware and security updates to improve reliability, enable new functionality, and install licensed software on networking devices.[105]

Based on the information provided in the renewal petitions and the lack of opposition, the Office concludes that the conditions that led to the adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Register intends to recommend renewal.

*O. Computer Programs—Repair of Motorized Land Vehicles, Marine Vessels, or Mechanized Agricultural Vehicles or Vessels*

Both MEMA, The Vehicle Suppliers Association (''MEMA'') and the Specialty Equipment Market Association (''SEMA'') file petitions to renew the exemption for 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 or vessel function (codified at 37 CFR 201.40(b)(13)).[106]

MEMA, representing manufacturers of replacement vehicle parts, tools, diagnostics, and technologies, states that ''completing a repair increasingly requires re-programming or configuring a replacement part so that it can communicate with the vehicle's electronic systems,'' which cannot be accomplished without circumventing a TPM.[107] SEMA, representing businesses that manufacture, distribute, supply, and sell specialty motor vehicle parts, states that the continued yearly technological advancements in vehicles makes the exemption ''even more critical for vehicle owners who work on their own vehicles and the service professionals they hire to diagnose, repair, customize, and modify their vehicles.'' [108] Both petitioners have participated in prior proceedings concerning this exemption.

The Alliance for Automotive Innovation (''Auto Innovators'') submitted a comment that does not oppose renewal of the exemption but raises concerns with the MEMA and SEMA petitions. Auto Innovators comments that MEMA and SEMA ''mischaracterize the scope of the existing exemption and appear to argue for an expanded exemption'' that would apply to activities that are prohibited by section 1201's anti-trafficking provisions.[109] Petitioners' ''suggestions that the existing exemption permits third-party repair shops to circumvent access controls on vehicle software in order to provide commercial repair services are incorrect,'' Auto Innovators asserts, because such activity is ''indisputably trafficking in an unlawful service under [s]ections 1201(a)(2) and (b).'' [110]

The Register has addressed the relationship between this exemption and the anti-trafficking provisions, including issues with third-party assistance, in previous rulemaking cycles.[111] In 2018, the Acting Register declined to express any ''view as to whether particular examples of assistance do or do not constitute unlawful circumvention services''—specifically, ''whether vehicle or other repair services may run afoul of the anti-trafficking provisions when engaging in circumvention on behalf of customers.'' [112] The Register reaffirmed this position in subsequent rulemakings.[113] As she observed then, the Librarian's authority under section 1201(a)(1) to grant exemptions to the anti-circumvention provisions ''does not extend to the anti-trafficking provisions.'' [114] Only Congress may expressly exempt activities that might constitute trafficking.[115] Because the legal circumstances have not materially changed since she last considered these issues, and cognizant of the scope of the Librarian's rulemaking authority, the Register finds no reason to revisit the relationship between third-party assistance and the anti-trafficking provisions. Moreover, reconsidering these issues would fall outside the scope of the streamlined renewal procedure, in which ''[o]nly petitions requesting renewal of current exemptions as currently written in the *Code of Federal Regulations,* without modification, may be considered.'' [116]

Based on the information provided in the renewal petitions pertaining to the

[101] These exemptions permit circumvention for the purpose of jailbreaking (1) smartphones and other portable all-purpose computing devices, (2) smart televisions, (3) voice assistant devices, and (4) routers and dedicated networking devices. *See* Electronic Frontier Foundation (''EFF'') Smartphone and Portable All-Purpose Mobile Computing Device Jailbreaking Renewal Pet.; EFF Smart TVs Jailbreaking Renewal Pet.; Software Freedom Conservancy (''SFC'') Smart TVs Jailbreaking Renewal Pet.; EFF Voice Assistant Devices Jailbreaking Renewal Pet.; SFC Routers and Dedicated Network Devices Jailbreaking Renewal Pet.

[102] EFF Smartphone and Portable All-Purpose Mobile Computing Device Jailbreaking Renewal Pet. at 4.

[103] SFC Smart TVs Jailbreaking Renewal Pet. at 4. The Office notes that SFC filed a highly similar renewal petition in the 2024 rulemaking proceeding. *See* 2024 SFC Smart TVs Jailbreaking Renewal Pet. If petitioner seeks renewal in future proceedings, the Office suggests that they provide additional information on current consumer interests as stated in the petition. *See* SFC Smart TVs Jailbreaking Renewal Pet. at 4 (citing to a now defunct SamyGO forum dedicated to ''custom Samsung TV firmware''); *see also* NOI at 34797 n.19.

[104] EFF Voice Assistant Devices Jailbreaking Renewal Pet. at 4.

[105] SFC Routers and Dedicated Network Devices Jailbreaking Renewal Pet. at 4.

[106] MEMA Vehicle or Vessel Repair Renewal Pet.; SEMA Vehicle or Vessel Repair Renewal Pet.

[107] MEMA Vehicle or Vessel Repair Renewal Pet. at 4.

[108] SEMA Vehicle or Vessel Repair Renewal Pet. at 4.

[109] Auto Innovators Vehicle or Vessel Repair Opp. at 1.

[110] *Id.* at 2.

[111] *See* 2018 Recommendation at 222–25; 2021 Recommendation at 230.

[112] 2018 Recommendation at 225.

[113] *See* 2021 Recommendation at 230 (adhering to the Office's 2018 position on third-party assistance); 85 FR 65293, 65299–300 (Oct. 15, 2020) (same); *cf.* 2024 Recommendation at 201–03 (recommending the Librarian adopt an exemption to allow lawful owners or lessees, or those acting on their behalf, to access, store, and share vehicle operational and telematics data while ''tak[ing] no position as to whether any particular act of circumvention by third parties on an owner's or lessee's behalf would implicate the section 1201(b) prohibition on trafficking'').

[114] 2021 Recommendation at 230.

[115] To this end, members have introduced legislation that would permit third-party assistance (as well as provision of tools) for particular uses, like farm equipment repair. *See* FARM Act, H.R. 5857, 119th Cong. (2025); FARM Act, S.3068, 119th Cong. (2025). The Office has expressed support for a statutory change to facilitate the provision of assistance to exemption beneficiaries in appropriate circumstances. *See* Section 1201 Study at 59–60.

[116] 2026 NOI at 34797.

current exemption and the lack of meaningful opposition to its renewal, the Office concludes that the conditions that led to the adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Register intends to recommend renewal.

*P. Computer Programs—Vehicle or Vessel Operational Data*

Multiple organizations petition to renew the exemption for computer programs that control motorized land vehicles, marine vessels, commercial vehicles or vessels, or mechanized agricultural vehicles or vessels for purposes of accessing, storing, and sharing operational data (codified at 37 CFR 201.40(b)(14)).[117] ReMA submitted a comment in support of renewal [118] and the Auto Innovators submitted a comment opposing renewal.[119]

Auto Care Association (''ACA'') states that ''[n]ew vehicles increasingly rely on access to operational data that may be stored on the vehicle or accessible electronically.'' [120] iFixit explains that exemption beneficiaries need access to vehicles' operational data for several reasons, including ''to understand equipment condition, anticipate service needs, compare performance, and share information with independent repair providers.'' [121] Likewise, MEMA states that TPMs ''restrict access to electronic control units,'' preventing ''vehicle owners and lessees from accessing non-copyrightable data that they themselves generate when driving,'' leaving drivers unable to ''share service alerts, vehicle performance metrics, or driving records with their preferred service provider, aftermarket parts manufacturer, or insurance company.'' [122] SEMA similarly asserts that as vehicles are increasingly integrated with software that ''controls the parts and operation of the vehicle,'' ''[t]elematics data is increasingly important to automotive parts manufacturers, including aftermarket parts suppliers and developers of aftermarket technologies that rely on [this] data to troubleshoot issues, support repairs, validate component performance, develop predictive maintenance solutions, and offer fleet optimization services.'' [123]

Petitioners participated in the previous rulemaking regarding this exemption or represent or have gathered information from individuals, professionals, or organizations in the vehicle repair industry or that manufacture, distribute, supply, and sell motor vehicle parts.[124]

Auto Innovators does not oppose renewal of the existing exemption, but commented to express concerns that ACA, MEMA, and SEMA misstate the exemption's scope in their renewal petitions.[125] Specifically, Auto Innovators object to petitioners' suggestions that the current exemption extends to ''unlawful trafficking in circumvention tools or the unlawful provision of circumvention services by third-party servicers.'' [126] As explained in Section O above, the Office declines to reconsider the relationship between third-party assistance and the anti-trafficking provisions in the context of the streamlined renewal procedure. The same applies to the provision on circumvention tools, which the Office has also previously addressed. In prior rulemakings, the Register declined to exempt the distribution or dissemination of circumvention tools in furtherance of uses found to be noninfringing; [127] and the law has not materially changed since. In any event, irrespective of how an exemption may be characterized in the renewal petitions or in comments in support or opposition, for purposes of renewal, its scope is defined by the text currently codified in the *Code of Federal Regulations.*

Based on the information provided in the renewal petitions and the lack of meaningful opposition to the current exemption, the Office concludes that the conditions that led to the adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Register intends to recommend renewal.

*Q. Computer Programs—Repair of Devices Designed Primarily for Use by Consumers*

iFixit petitions to renew the exemption for computer programs that control devices designed primarily for use by consumers for diagnosis, maintenance, or repair of the device (codified at 37 CFR 201.40(b)(15)).[128] No comments were filed opposing renewal.

iFixit, based on its repair work and information-gathering from device owners and independent technicians, asserts that the need for the exemption continues, as ''[s]oftware and access controls remain integral to smartphones, computers, home appliances, game consoles, and other devices.'' [129] For example, iFixit explains that diagnosis and repair of appliances may ''require entering a restricted service mode to read fault codes, test components, or clear an error after a physical repair.'' [130]

Based on the information provided in the renewal petition and the lack of opposition to renewal, the Office concludes that the conditions that led to adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Register intends to recommend renewal.

*R. Computer Programs—Repair of Retail-Level Commercial Food Preparation Equipment*

Public Knowledge and iFixit jointly petition to renew the exemption for computer programs that control retail-level commercial food preparation equipment for purposes of diagnosis, maintenance, or repair of the device (codified at 37 CFR 201.40(b)(16)).[131] No comments were filed opposing renewal.

Petitioners, proponents of the exemption in the last proceeding, state that regulatory trends have ''spurred growth of 'smart' food preparation equipment'' and contend that this trend will continue in the coming years.[132] Petitioners, based on ''regular consultation with those impacted by the exemption,'' contend that manufacturers can adversely affect device owners and independent repair technicians by preventing them from engaging in repair of commercial food preparation equipment.[133]

Based on the information provided in the renewal petition and the lack of opposition, the Office concludes that

[117] Auto Care Association (''ACA'') Vehicle or Vessel Data Renewal Pet.; iFixit Vehicle or Vessel Data Renewal Pet.; MEMA Vehicle or Vessel Data Renewal Pet.; SEMA Vehicle or Vessel Data Renewal Pet.

[118] ReMA Vehicle or Vessel Data Supp.

[119] Auto Innovators Vehicle or Vessel Data Opp.

[120] ACA Vehicle or Vessel Data Renewal Pet. at 4.

[121] iFixit Vehicle or Vessel Data Renewal Pet. at 4.

[122] MEMA Vehicle or Vessel Data Renewal Pet. at 4.

[123] SEMA Vehicle or Vessel Data Renewal Pet. at 4.

[124] MEMA Vehicle or Vessel Data Renewal Pet. at 4; SEMA Vehicle or Vessel Data Renewal Pet. at 4.

[125] Auto Innovators Vehicle or Vessel Data Opp. at 1–3.

[126] *Id.* at 2–3.

[127] *See, e.g.,* 2024 Recommendation at 154; 2021 Recommendation at 230; 2018 Recommendation at 225–26.

[128] iFixit Device Repair Renewal Pet. ImageOne Medical Group, LLC (''ImageOne'') submitted a renewal petition, selecting the radio button for the current consumer device repair exemption. *See* ImageOne Device Repair Renewal Pet. at 3. However, its petition explicitly states that it intended to renew the medical device repair exemption, discussed below. *See id.* at 4; *infra* Section II.S (discussing renewal petitions pertaining to the repair of medical devices and systems).

[129] iFixit Device Repair Renewal Pet. at 4.

[130] *Id.*

[131] Public Knowledge & iFixit Retail-Level Commercial Food Preparation Equipment Repair Pet.

[132] *Id.* at 4.

[133] *Id.*

the conditions that led to the adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Register intends to recommend renewal.

*S. Repair of Medical Devices and Systems*

The Office received multiple petitions to renew the exemption to access computer programs that are contained in and control the functioning of medical devices or systems, and related data files, for diagnosis, maintenance, or repair (codified at 37 CFR 201.40(b)(17)).[134] One comment was filed in support of the renewal petitions; [135] four comments were filed in opposition.[136]

Seven of the eight petitions assert a continuing need and justification for the exemption.[137] For example, BMI, Caylor, and ECMS assert that the exemption is both ''critical'' and essential to timely diagnosing and completing the necessary maintenance and repairs of medical devices.[138] ECMS explains that ''[a]ccess to software functions, diagnostic information, system logs, error logs, and other related data files is often necessary to identify the cause of equipment failures and to perform appropriate maintenance and repairs.'' [139] iFixit asserts that ''[l]awfully acquired medical devices and systems remain dependent on embedded software, diagnostic programs, calibration functions, configuration data, and related data files'' that must be accessed to complete the required diagnosis maintenance and repair.[140] ImageOne states that ''[p]assword-protected diagnostic software and restricted access to error logs and service data files routinely interfere with timely diagnosis and repair,'' noting certain types of repairs ''require direct access to software-generated error logs to accurately isolate the failure and complete repair without unnecessary downtime.'' [141] According to Marshall Shannon, ''[m]odern medical devices cannot be safely installed or serviced without interacting with embedded software, service modes, configuration files, logs, certificates, credentials, and diagnostic utilities.'' [142] Trimedx reports that it relies on the current exemption to repair medical systems and describes a recent incident where TPMs ''prevented access to [the] necessary software keys required'' to repair a device, which left it ''to choose between accepting [manufacturer]-only servicing at inflated costs or leaving the device inoperable''; resolution only occurred after ''extended negotiations'' between Trimedx and the manufacturer.[143] Petitioners have personal knowledge of and experience with this exemption; each either repairs, maintains, services, or sells medical systems and devices, or represents or consults with entities or individuals that repair, maintain, service, or sell medical systems and devices.

AMT Imaging Solutions, an independent service organization that services medical equipment, concurs with petitioners that the need for the exemption continues. It comments that ''[w]ithout the ability to lawfully access [embedded medical device software] programs and files for diagnosis, maintenance, and repair, hospitals and imaging centers lose a competitive service option, and patients face longer downtime when equipment fails.'' [144] In addition, AMT Imaging Solutions cites the D.C. Circuit's recent decision in *Medical Imaging & Technology Alliance* v. *Library of Congress* (''*MITA*'') as ''confirm[ation] that the exemption was lawfully adopted.'' [145]

Comments opposing renewal of the medical device repair exemption assert that, contrary to petitioners' statements, the rulemaking record from prior proceedings no longer serves as a valid or reliable basis for readopting the current exemption.[146] AdvaMed and Philips present legal and factual developments as evidence supporting ''meaningful opposition'' to renewal.

AdvaMed and Philips both cite the recent D.C. Circuit opinion in *MITA* as a new legal development affecting the scope of the current exemption and the fair use analysis.[147] Although the court affirmed dismissal of their challenge to the exemption, AdvaMed notes that the D.C. Circuit, like the Library of Congress and the Office, declined to address any alleged distinction between ''repair software'' and ''clinical-operation software'' because ''[a]ppellants did not demonstrate before the agency the existence of this distinction that it now presses.'' [148] The court observed that, based on its review of the administrative record, opponents of the exemption addressed this ''possible distinction only in vague terms and provide[d] no

[134] *See* Brown's Medical Imaging (''BMI'') Medical Device Repair Renewal Pet.; Caylor Equipment Services (''Caylor'') Medical Device Repair Renewal Pet.; Crothall Facilities Management, Inc. (''Crothall'') Medical Device Repair Renewal Pet.; East Coast Medical Systems (''ECMS'') Medical Device Repair Renewal Pet.; iFixit Medical Device Repair Renewal Pet.; ImageOne Medical Device Repair Renewal Pet. (On its renewal petition, ImageOne selected the radio button for the current consumer device repair exemption; this selection appears to be in error as the narrative portion of the petition explicitly refers to the medical device repair exemption. Accordingly, the Office treats ImageOne's petition as a renewal of the medical device repair exemption.); Shannon Medical Device Repair Renewal Pet.; Trimedx Holdings, LLC (''Trimedx'') Medical Device Repair Renewal Pet. Marshall Shannon, after experiencing technical issues with submitting the petition forms provided by the Office, timely submitted a ''Petition to Renew and Supporting Statement and Petition for a New or Modified Exemption for Medical-Device Diagnosis, Installation, Maintenance, Repair, Calibration, and Return to Service.'' To the extent that Shannon's submission seeks to renew the existing exemption as currently written in the *Code of Federal Regulations,* without modification, the Office considers it as a renewal petition. *See* NOI at 34797. The Office will consider portions of Shannon's submission that seek ''clarification or a modified exemption'' as a petition for an expanded exemption. In addition, Trimedx lists ''regulatory compliance'' among the purposes covered by the existing exemption. Trimedx Medical Device Repair Renewal Pet. at 4. Because that use is not expressly covered by the exemption, however, the Office will not evaluate it under the renewal procedure and instead will consider it as a proposed expansion. *See infra* Section III.H (discussing Proposed Class 8: Computer Programs—Repair).

[135] AMT Imaging Solutions LLC Medical Device Repair Supp.

[136] AdvaMed Medical Device Repair Opp. #1; Joint Creators Medical Device Repair Opp.; Philips Medical Device Repair Opp. AdvaMed submitted an additional comment opposing the proposed expansion of the medical device repair exemption in Shannon's medical device repair petition. *See* AdvaMed Medical Device Repair Opp. #2.

[137] An eighth petition, submitted by Crothall, did not meet the Office's requirements for renewal petitions. While the Office requires ''a brief explanation summarizing the basis for claiming a continuing need and justification for the exemption,'' NOI at 34797, Crothall's petition, which is substantively identical to its renewal petition submitted in the last cycle, *see* 2024 Crothall Medical Device Repair Renewal Pet., contains only two brief sentences stating that its ability to service medical devices ''can be impacted'' by software restrictions. *See* Crothall Medical Device Repair Renewal Pet. at 4 (''[Crothall's] ability to service a device without using the installed software and data files can be impacted by software access. Access to software error logs is a critical function in the optimal diagnosis, maintenance, and repair of devices.''). Similarly to the last cycle, because other petitioners provide the required information for renewal to be considered, Crothall's petition is not discussed further.

[138] BMI Medical Device Repair Renewal Pet. at 4; Caylor Medical Device Repair Renewal Pet. at 4; ECMS Medical Device Repair Renewal Pet. at 4.

[139] ECMS Medical Device Repair Renewal Pet. at 4.

[140] iFixit Medical Device Repair Renewal at 4.

[141] ImageOne Medical Device Repair Renewal at 4.

[142] Shannon Medical Device Repair Renewal at 3.

[143] Trimedx Medical Device Repair Renewal Pet. at 4.

[144] AMT Imaging Solutions Medical Device Repair Supp.

[145] *Id.* (citing *Med. Imaging and Tech. All.* v. *Libr. of Cong.* (''*MITA*''), No. 25–5328, slip op. at 12 (D.C. Cir. Sep. 1, 2026)).

[146] AdvaMed Medical Device Repair Opp. #1 at 2–4; Philips Medical Device Repair Opp. at 1–2.

[147] AdvaMed Medical Device Repair Opp. #1 at 3, 5–7; Philips Medical Device Repair Opp. at 5.

[148] AdvaMed Medical Device Repair Opp. #1 at 3 (citing *MITA,* slip op. at 13–15).

supporting evidence.'' [149] Philips also stresses this distinction and claims that *MITA* ''established the disputed scope of the exemption'' as covering ''clinical operational software'' but not ''separately protected service software.'' [150] Philips further contends that arguments made in the case ''highlighted the night-and-day difference between the fair use analysis for clinical operational software on the one hand and service software on the other.'' [151]

These commenters also offer factual evidence that was not presented in prior rulemakings to argue that the administrative record, for purposes of streamlined renewal, is no longer sufficient. AdvaMed's submission includes ''first-hand evidence from medical device manufacturers'' in the form of sworn declarations from executives with ''expert knowledge and operational responsibility for the servicing of their company's medical devices.'' [152] These declarations, AdvaMed asserts, establish three facts absent from the administrative record from prior rulemakings. Specifically, they allege: (1) there are three categories of copyrighted works at issue and that ''System Servicing/Diagnostic Software'' and ''Maintenance-Related Documentation'' are works distinct from ''Clinical Operation Software''; (2) different TPMs protect these categories of works; and (3) manufacturers license and commercially exploit servicing materials separately from the sale or lease of a medical device.[153] Philips, in describing its own products, similarly states that there are distinct types of medical device software that are protected by different TPMs.[154]

In addition to providing evidence to challenge the basis for re-adopting the current exemption, AdvaMed and Philips assert that the petitions fall short of the standard for renewal. AdvaMed details specific deficiencies with each petition, both procedural (*e.g.,* missing a legible name or signature, wrong exemption selected on petition form) and substantive (*e.g.,* failure to show personal knowledge or experience of adverse effects).[155] Philips faults all of the petitions for ''describing a need for service works as opposed to clinical operational software'' because they ''seek to renew an exemption that was never intended to cover the precise works they wish to access.'' [156]

Finally, all four comments opposing renewal object to the consideration of proposals that would expand the current exemption under the streamlined renewal procedure. As noted above, Shannon seeks ''clarification or a modified exemption'' and Trimedx's petition includes ''regulatory compliance of [medical] devices'' among the proposed uses. Opponents state that, to the extent that these petitions propose activity that exceeds the scope of the current exemption, it is inappropriate for the Office to evaluate such uses without affording affected persons the opportunity to provide notice and comment.[157]

The Office may recommend renewal of a current exemption under the streamlined process where it determines that a petitioner has made a minimal showing that the record supporting the exemption remains representative of current legal and factual circumstances. This minimal showing, however, can be overcome by ''meaningful opposition.'' [158] Meaningful opposition may be established with ''evidence that the prior rulemaking record is no longer a valid basis to support recommending renewal of an exemption.'' [159] Specifically, evidence should consist of new legal or factual developments that address ''the reliability of the previously[ ]analyzed administrative record.'' [160]

The Office has reviewed participants' submissions and finds that the new evidence and arguments provided in the opposition comments collectively amount to meaningful opposition. While petitioners provided evidence that diagnosis, maintenance, and repair of medical devices and systems continue to be adversely affected by the prohibition against circumvention, the opposition comments include new evidence and arguments that may cast uncertainty on the current reliability of the existing administrative record. They provide evidence of different types of medical device software that are configured differently depending on the purpose of the software and, in some cases, may not be stored on the device. That evidence raises questions about whether the scope of the current exemption, which permits circumvention to access ''[c]omputer programs that are contained in and control the functioning of'' those devices, is defined with sufficient specificity.[161]

Further, opponents' new evidence bears on the fact-specific fair use analysis and the statutory factors for adverse effects determinations. Although opponents cite the *MITA* decision as a ''new legal development,'' the D.C. Circuit's opinion, like the Supreme Court's decision in *Andy Warhol Found. for the Visual Arts* v. *Goldsmith* (''*Warhol*''), did not change the legal framework for analyzing the proposed uses.[162] Indeed, after considering the legal analysis in prior rulemakings, the court concluded that ''the Librarian's adoption of the medical device repair exemption was lawful, reasonable, and supported by 'thorough and well-reasoned explanations from the Eighth and Ninth Triennial Rulemaking procedures.' '' [163] Nevertheless, the opinion highlighted a disputed *factual* issue that could affect the section 1201 analysis, *i.e.,* opponents' contention ''that there is a distinct body of repair software independent from the clinical-operation software and that it occupies its own standalone market.'' [164] While the court rightly rejected this assertion because appellants ''made no such record in the rulemaking process or before the district court,'' [165] opponents have appropriately raised it here. The comments outlining these factual developments and their legal significance therefore constitute meaningful opposition.[166]

[149] *Id.* (citing *MITA,* slip op. at 15).

[150] Philips Medical Device Repair Opp. at 1.

[151] *Id.; see* AdvaMed Medical Device Repair Opp. #1 at 5–7 (commenting that the *MITA* court analyzed fair use only with respect to ''Clinical Operating Software'' and that this analysis is different for ''Servicing Works'').

[152] AdvaMed Medical Device Repair Opp. #1 at 3–5, 7–17, Exs. A–E.

[153] *Id.*

[154] Philips Medical Device Repair Opp. at 3, Ex. A (Jacqueline Dickson Decl.).

[155] AdvaMed Medical Device Repair Opp. #1 at 20–24.

[156] Philips Medical Device Repair Opp. at 6–7.

[157] AdvaMed Medical Device Repair Opp. #1 at 24–28; AdvaMed Medical Device Repair Opp. #2; Joint Creators Medical Device Repair Opp. at 2; Philips Medical Device Repair Opp. at 7–8.

[158] NOI at 34797.

[159] *Id.* (quoting 88 FR 37486, 37488 (June 8, 2023)).

[160] *Id.* at 34797–98 (quoting 85 FR at 65295).

[161] 37 CFR 201.40(b)(17).

[162] *See* 2024 Recommendation at 38 (rejecting arguments that *Warhol* amounted to an intervening change in the law that undermined the validity of the medical device repair exemption).

[163] *MITA,* slip op. at 12.

[164] *Id.* at 13.

[165] *Id.*

[166] Because the Office has determined that medical device repair is ineligible for the streamlined renewal procedure and will instead evaluate the exemption after seeking notice and comment, the Office need not determine whether any renewal petitions would inappropriately expand the exemption. NOI at 34797–98; *see also* 88 FR at 37487 (explaining that when current exemptions are not recommended for renewal, the petition ''automatically convert[s] into a petition for a new exemption,'' that proceeds through three rounds of public comment). All medical device repair petitions and comments, pertaining to both the existing exemption and proposed expansions, will be considered together as part of a single proposed class.

In light of this finding, to fully consider whether the basis for the current medical device repair exemption remains sound, as well as whether it should be modified or expanded, the Office will evaluate all the proposed repair-related uses of copyrighted works on medical devices and systems together as a potential new exemption in the public comment phase.[167] This process will allow participants to develop a new administrative record for medical device repair by submitting comments and participating in a public hearing.[168] It will also promote administrative efficiency in considering the scope of the proposed exemption as both opponents and some petitioners seek clarification about its breadth. The Office has therefore included the current exemption in its analysis and classification of proposed new or expanded exemptions as Proposed Class 8: Computer Programs—Repair, below.[169]

*T. Computer Programs—Security Research*

Multiple organizations and security researchers petition to renew the exemption permitting circumvention for purposes of good-faith security research (codified at 37 CFR 201.40(b)(18)).[170] No comments were filed opposing renewal.

Professor Michael Specter states that security researchers ''play a vital role'' in cybersecurity, as ''vulnerability disclosure and remediation are key to securing existing infrastructure.'' [171] Professors Matt Blaze and Steven Bellovin assert that an exemption is necessary not only because they have personal knowledge of security researchers who rely on the exemption but that ''during the last three years, one of us has continued to be impacted by threats of prospective litigation from copyright holders in connection with his security research on software in voting systems.'' [172] Additionally, MEMA explains that the exemption is needed because it enables its members and other beneficiaries ''to develop and test aftermarket parts, diagnostic tools, and service equipment with full knowledge of potential security implications'' that may otherwise go undetected, putting vehicle owners and the public at risk.[173] SFC states that the exemption continues to be used by ''privacy and security researchers who investigate and publish information about privacy [ ] flaws in computing devices'' and ''individual consumers and hobbyists who wish to prevent their private data from being disclosed by the devices they own.'' [174]

Based on the information provided in the renewal petitions and the lack of opposition, the Office concludes that the conditions that led to the adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Register intends to recommend renewal.

*U. Computer Programs—Video Game Preservation*

LCA, Dan Elkins, and Ken Austin petition to renew the exemption for individual play by gamers and preservation of video games by a library, archives, or museum for which outside server support has been discontinued, and preservation by a library, archives, or museum of discontinued video games that never required server support (codified at 37 CFR 201.40(b)(19)).[175] No comments were filed opposing renewal.

According to the LCA petition, the exemption ''has had continuing utility for video game preservation by libraries, archives, and museums'' and will continue to be needed in the future because ''[s]ubstantial numbers of historic video games were published with [TPMs] in place, and digital preservation is an ongoing, iterative process.'' [176] LCA asserts the exemption has become a ''crucial tool'' in these institutions' ''ongoing efforts to save digital game culture before it disappears.'' [177] LCA petitioned for this exemption during the 2018 triennial rulemaking and has petitioned for its renewal in each subsequent rulemaking.[178] Elkins states that owners of lawfully acquired videogames, like himself, ''remain exposed to the continuing risk that authentication or server dependencies can prevent access to [the] functionality of software they lawfully acquired,'' such as when a videogame developer stopped supporting an original version of a game for online use that he purchased.[179] Austin also attests that he has games ''with [digital rights management (''DRM'')] that can no longer authenticate due to defunct online servers'' and without the exemption, he cannot access the games to restore playability, ''despite the fact [he] lawfully acquired them.'' [180] These two individual petitioners possess personal knowledge and experience relevant to the exemption's provisions.

Based on the information provided in the renewal petitions and the lack of opposition, the Office concludes that the conditions that led to the adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Register intends to recommend renewal.

*V. Computer Programs—Software Preservation*

LCA petitions to renew the exemption for computer programs, other than video games, for the preservation of computer programs and computer program-dependent materials by libraries, archives, and museums (codified at 37 CFR 201.40(b)(20)).[181] No comments were filed opposing renewal.

LCA states that libraries, archives, and museums continue to need and rely on the exemption to preserve and curate software and materials dependent on software, which is ''an ongoing [and] iterative process.'' [182] For example, it explains that ''[s]ubstantial numbers of computer programs were published with [TPMs] in place,'' and that ''[r]esearch interest in preserved software will only grow as scholars and students become increasingly aware of the research value of these materials.'' [183] On behalf of its members who rely on this exemption, LCA has participated in previous triennial rulemaking proceedings, petitioning for the adoption and renewal of this exemption.[184]

Based on the information provided in the renewal petition and the lack of opposition, the Office concludes that

[167] NOI at 34797.

[168] *See* AdvaMed Medical Device Repair Opp. #1 at 3 (proposing that the Office deny streamlined renewal of the exemption as written and instead ''carry the question forward into the public comment phase where a record can be built''); Philips Medical Device Repair Opp. at 2, 8 (''[T]he Copyright Office should decline to renew the exemption under the streamlined procedure and require proponents to develop a disaggregated record in a full rulemaking that provides particularized fair use analysis for each distinct category of copyrighted work residing on medical devices.'').

[169] *See infra* Section III.H (discussing Proposed Class 8: Computer Programs—Repair).

[170] Blaze & Bellovin Security Research Renewal Pet.; MEMA Security Research Renewal Pet.; Specter Security Research Renewal Pet.; SFC Security Research Renewal Pet.

[171] Specter Security Research Renewal Pet. at 4.

[172] Blaze & Bellovin Security Research Renewal Pet. at 4.

[173] MEMA Security Research Renewal Pet. at 4.

[174] SFC Security Research Renewal Pet. at 4.

[175] LCA Abandoned Video Games Renewal Pet.; Elkins Abandoned Video Games Renewal Pet.; Austin Abandoned Video Games Renewal Pet.

[176] LCA Abandoned Video Games Renewal Pet. at 4.

[177] *Id.*

[178] *Id.*

[179] Elkins Abandoned Video Games Renewal Pet. at 4.

[180] Austin Abandoned Video Games Renewal Pet. at 4.

[181] LCA Software Preservation Renewal Pet.

[182] *Id.* at 4.

[183] *Id.*

[184] *Id.*

the conditions that led to the adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Register intends to recommend renewal.

*W. Computer Programs—3D Printing*

Michael Weinberg petitions to renew the exemption for computer programs that operate 3D printers to allow use of alternative material (codified at 37 CFR 201.40(b)(21)).[185] No comments were filed opposing renewal.

Weinberg, who has participated in each triennial rulemaking in which this exemption has been considered, declares that he has been ''involved with the 3D printing community and industry for over a decade.'' [186] The petition asserts that while 3D printer manufacturers ''continue to use TPMs to limit the types of materials used in printers,'' the current exemption has continued to result in ''an expansion of third-party materials available for 3D printers.'' [187]

Based on the information provided in the renewal petition and the lack of opposition, the Office concludes that the conditions that led to the adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Register intends to recommend renewal.

*X. Computer Programs—Copyright License Investigation*

SFC petitions to renew the exemption for computer programs, for the purpose of investigating potential infringement of free and open source computer programs (codified at 37 CFR 201.40(b)(22)).[188] No comments were filed opposing renewal.

SFC states it ''regularly and routinely investigates computers and computerized devices . . . to determine whether the manufacturers are complying with the relevant [free and open source software] licenses.'' [189] It also states that ''reports of violations of [these] licenses have more than doubled in only the last year'' and that it has recently observed ''an increase in locking down computerized devices'' that prevents investigations into license compliance.[190] SFC has participated in the previous rulemakings regarding this exemption and contributed to the rulemaking record that led to the Register recommending the exemption.[191]

Based on the information provided in the renewal petition and the lack of opposition, the Office concludes that the conditions that led to the adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Register intends to recommend renewal.

## III. Analysis and Classification of Proposed New or Expanded Exemptions

In addition to petitions to renew existing exemptions, the Office received twenty-five petitions for new or expanded exemptions. The Office has reviewed and consolidated related and/or overlapping proposed exemptions to simplify the rulemaking process and encourages joint participation among parties with common interests (although collaboration is not required).[192] The Office proposes ten consolidated classes of works, including the meaningfully opposed renewal petition.

Each proposed class is briefly described below, and additional information can be found in the underlying petitions posted on the Office's website. As explained in the NOI, the proposed classes represent '' 'only a starting point for further consideration in the rulemaking proceeding,' and will be subject to 'further refinement based on the record.' '' [193] The description of each class also includes preliminary legal and factual areas of interest that the Office hopes commenters will address in their submissions. These early observations are offered without prejudice to the Office's ability to raise other questions or concerns at later stages of the proceeding, and commenters should offer all legal arguments and evidence they believe necessary to create a complete record. Finally, the Office reminds exemption proponents that ''where an exemption request resurrects legal or factual arguments that have been previously rejected, the Office will continue to rely on past reasoning to dismiss such arguments in the absence of new information.'' [194]

*A. Proposed Class 1: Audiovisual Works—Accessibility and Captioning*

Accessibility Petitioners jointly petition for a new exemption to permit libraries and other public entities to circumvent access controls on audiovisual works hosted on web or mobile app interfaces for purposes of captioning and audio description ''to provide the accessibility required by recently adopted regulations relating to the Americans with Disabilities Act.'' [195] They assert that an exemption is needed for public entities to comply with recently adopted accessibility regulations that ''ensure accessibility features, such as audio descriptions or synchronized captions, are available to persons with disabilities.'' [196]

The current captioning and audio description exemption is limited to disability services offices or similar units at educational institutions.[197] Accessibility Petitioners seek an exemption for a broader class of public entities to correspond with the entities subject to 28 CFR 35.200, including public libraries that will be obligated to provide accessible versions of online content they supply to their users.[198]

The Office seeks comment on whether the proposed exemption should be adopted, including any proposed regulatory language. Commenters should describe with specificity the relevant TPMs sought to be circumvented and whether their presence is adversely affecting noninfringing uses. Commenters should address whether the works are available in accessible formats that do not require circumvention and any anticipated effect that circumvention of TPMs would have on the potential market for or value of the relevant copyrighted works.

*B. Proposed Class 2: Audiovisual Works—Criticism and Comment*

Jayden Milne petitions to expand the current exemption allowing for circumvention of access controls protecting motion pictures on DVDs, Blu-ray discs, and digitally transmitted video for criticism and comment purposes.[199] Milne requests that the exemption be extended to include Ultra HD Blu-ray Discs protected by Advanced Access Content System 2 (''AACS2'') and not be limited to non-commercial uses, with the provision

[185] Weinberg 3D Printers Renewal Pet.

[186] *Id.* at 4.

[187] *Id.*

[188] SFC Copyright License Investigation Renewal Pet.

[189] *Id.* at 4.

[190] *Id.*

[191] *Id.*

[192] NOI at 34798.

[193] *Id.* (quoting 88 FR at 37489).

[194] Section 1201 Study at 147; *see also* 79 FR 55687, 55690 (Sep. 17, 2014).

[195] Accessibility Petitioners Class 1 Pet. at 2.

[196] *Id.; see also* 28 CFR 35.200 (discussing the requirements for web and mobile accessibility as part of the Americans with Disabilities Act (''ADA'')).

[197] Accessibility Petitioners Class 1 Pet. at 2; *see* 37 CFR 201.40(b)(2).

[198] Accessibility Petitioners Class 1 Pet. at 2 (noting that ''[t]he broad definition of public entity under the Americans with Disabilities Act includes 'any state or local government, any department, agency, special purpose district, or other instrumentality of a state or local government . . . .' '').

[199] Milne Class 2 Pet. at 2.

that certain videos would be licensed, sold, or distributed for commercial purposes.[200] The proposed expansion also appears to eliminate the current use categories of criticism and comment so that users, who are ''[i]ndividuals who own the disc, remain in continuous lawful possession, and create the critical work alone, with collaborators, or for an entity'' can incorporate the work ''into a video, film, or nonfiction multimedia e-book for criticism or comment.'' [201] Milne explains that an exemption is needed because ''some UHD editions contain distinct cuts, restorations, or presentation attributes, while licensed Windows-PC UHD-disc playback has ceased, narrowing potential source workflows.'' [202]

The Office notes that in the two previous triennial rulemakings it considered whether this exemption should be expanded to include AACS2 technology. During those rulemakings, the Office determined that the rulemaking records were insufficient to justify proposed expansions.[203] The Office seeks comment on whether any changed legal or factual developments warrant altering those determinations and whether, or to what extent, the proposed expansion should be adopted, including any proposed regulatory language. Commenters should also address whether it is necessary to expand the exemption beyond the uses permitted under the current exemption (*i.e.,* documentary filmmaking, noncommercial videos, and nonfiction multimedia e-books), to cover all criticism and commentary, including commercial uses, and the extent to which those other uses are or are likely to be adversely affected. Commenters should also discuss whether eligible users may access the works in ways not requiring circumvention.

### *C. Proposed Class 3: Audiovisual Works—Playback on Unsupported Devices*

Jayden Milne submits two petitions seeking new exemptions for contemporaneous, private, local, noncommercial playback of DVD, Blu-ray, and Ultra HD Blu-ray discs on an owner-controlled general-purpose personal computer for which no licensed player is available.[204] The proposed exemptions would permit circumvention of discs protected by Content Scramble System (''CSS''), Advanced Access Content System (''AACS''), AACS2, and BD+.[205]

The Office notes that the Register recommended against similar proposals in the 2015, 2010, 2006, 2003, and 2000 triennial rulemakings.[206] These proposed exemptions would have permitted the circumvention of DVD access controls to enable playback on personal computers running incompatible operating systems, such as Linux. For instance, in the 2003 rulemaking, the Office explained, ''[w]hile it is unfortunate that persons wishing to play CSS-protected DVDs on computers with the Linux operating system have few options,'' they have the ''same options that other consumers have. . . . [A]ll motion pictures on CSS-protected DVDs remain available even to Linux users. The Linux users simply must use the consumer electronic devices used by most consumers to view those DVDs.'' [207] Therefore, the Office seeks comment on any differences in the two proposals and whether any changed legal or factual circumstances warrant a different conclusion here. Additionally, the Office seeks general comment on the impact this proposed exemption would have on the ability of rightsholders to exercise their rights and the ability of consumers to make noninfringing uses of audiovisual works. Commenters addressing both proposals should provide supporting evidence sufficient with respect to each, including evidence establishing adverse effects on noninfringing uses with respect to each proposal and similarities between the proposals, if any, regarding the relevant factual and legal issues.

### *D. Proposed Class 4: Audiovisual Works—Replacement*

Six petitions seek to circumvent access controls on motion pictures distributed on optical discs or through streaming services to make replacement copies when the disc or the equipment needed to play it are unavailable, or a digital copy of the work is no longer usable or available. For reasons of administrative efficiency, the Office has grouped these proposals into one overall class with three subclasses. Each commenter may submit only a single comment addressing Class 4, which may address some or all subclasses. Supporting evidence must be sufficient to establish an adverse effect on noninfringing uses with respect to each subclass.

#### Proposed Subclass 4(a): Preservation

Three separate petitions, two from Jayden Milne and one from James and Rebekkah Stakebake, propose a new exemption to facilitate personal, noncommercial preservation of audiovisual works stored on lawfully acquired DVDs, Blu-ray discs, and Ultra HD Blu-ray discs protected by CCS, AACS, AACS2, and BD+.[208]

One Milne petition and the Stakebakes' petition both propose an exemption that would permit individuals to create digital copies due to disc damage or deterioration.[209] Milne further specifies that the original disc would be ''retained and retired from ordinary viewing once the replacement is used'' and could be voluntarily transferred, but the proposal would still permit certain subsequent uses of both the original and replacement disc.[210] In a second petition, Milne proposes an exemption that would permit individuals to preemptively preserve discs prior to deterioration by creating one noncommercial copy, which could be used for ''integrity testing and private viewing.'' [211] The petition does not

[200] *Id.*

[201] *Id.; see* 37 U.S.C. 201.40(b)(1)(i).

[202] Milne Class 2 Pet. at 2.

[203] *See* 2021 Recommendation at 39–40 (''[T]he record does not support a finding that AACS2 technology is adversely affecting noninfringing uses or that it is sufficiently similar to AACS1 to be covered by the current exemption.''); 2018 Recommendation at 39–41 (''None of the petitions expressly seek expansion to AACS2, and the record does not support a finding that such technology is adversely affecting noninfringing uses or that it is sufficiently similar to AACS1 to be covered by the current exemption.'').

[204] *See* Milne Class 3 Pet. #1 at 2 (Unsupported-Platform Optical-Disc Playback); Milne Class 3 Pet. #2 at 2 (Ultra HD Blu-ray PC Playback).

[205] Milne Class 3 Pet. #1 at 2; Milne Class 3 Pet. #2 at 2.

[206] *See* 2015 Recommendation 126; U.S. Copyright Office, Section 1201 Rulemaking: Fourth Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention, Recommendation of the Register of Copyrights 224 (2010) (''2010 Recommendation''), *https://cdn.loc.gov/copyright/1201/2010/initialed-registers-recommendation-june-11-2010.pdf;* U.S. Copyright Office, Section 1201 Rulemaking: Third Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention, Recommendation of the Register of Copyrights 72–73 (2006) (''2006 Recommendation''), *https://cdn.loc.gov/copyright/1201/docs/1201_recommendation.pdf;* 2003 Recommendation at 145–46; 65 FR 64556, 64569 (Oct. 27, 2000).

[207] 2003 Recommendation at 145–46.

[208] Milne Class 4(a) Pet. #1 at 2 (Preventative Personal Preservation); Milne Class 4(a) Pet. #2 at 2 (Damaged or Deteriorating Optical-Disc Replacement); Stakebake & Stakebake Class 4(a) Pet. at 2.

[209] *See* Stakebake & Stakebake Class 4(a) Pet. at 2 (identifying purpose of ''[p]ersonal, noncommercial archival preservation and creation of backup copies to prevent loss due to physical media deterioration [and] damage''); Milne Class 4(a) Pet. #2 at 2 (''The purpose is to make one secured, noncommercial personal replacement while an owned disc is actually damaged or objectively deteriorating but remains recoverable.'').

[210] Milne Class 4(a) Pet. #2 at 2.

[211] Milne Class 4(a) Pet. #1 at 2. Petitioner proposes ''owner-only use'' as a fallback if household viewing is not included in the exemption.

specify whether the copy would be on disc or digital.

The Office notes that the Register considered a similar request in the 2021 rulemaking pertaining to preservation and replacement copies of motion pictures by libraries, archives, and museums.[212] In that rulemaking, the Register recommended the exemption be granted in part and denied in part. With respect to damaged or deteriorating discs, the Register recommended an exemption, provided that the motion pictures in question were not reasonably available for purchase or streaming, but determined that proponents had not established that copying discs prior to deterioration was fair use.[213] The Librarian adopted this exemption in the final rule and renewed it in the 2024 rulemaking;[214] the Register is again recommending it for renewal in this rulemaking.[215]

The Office seeks comment on whether preservation for personal purposes, as opposed to institutional purposes, impacts the analysis and whether there have been any legal or factual developments regarding preemptive preservation. The Office encourages commenters to develop the legal and factual administrative record, including addressing with specificity the format of the proposed copies, the proposed uses of both the original and the copy, and the impact the exemption would have on the market for the copyrighted works at issue.

Proposed Subclass 4(b): Hardware Obsolescence

Two petitions propose a new exemption that would allow circumvention of technical measures protecting motion pictures and television programs that are stored and released on optical discs.[216] James and Rebekkah Stakebake, in the same petition as discussed in class 4(a), also petition to allow ''[p]ersonal, noncommercial archival preservation and creation of backup copies to prevent loss due to . . . hardware obsolescence,'' where the media is lawfully purchased.[217] The Stakebakes explain that the TPMs on the physical media ''currently prevent users from copying the content to secure digital storage for preservation purposes.'' [218] Jamlark also petitions for an exemption permitting both ''individual consumers and physical media rental libraries maintaining circulating collections'' to ''format-shift[] . . . a lawfully owned disc to a digital file for personal or controlled-circulation use,'' when hardware required to play that disc is ''experiencing continuing, accelerating decline in availability.'' [219] It asserts that ''[w]hile used playback hardware for some formats remains findable on secondary markets, that supply is finite, non-replenishing, and subject to ongoing depletion through failure and attrition.'' [220] While Jamlark seeks to allow personal and commercial users to make use of the backup copy in circumstances where the work is otherwise unavailable, the Stakebakes' petition does not specify conditions for use of the copy.[221]

The Office seeks comment on whether this proposed exemption should be adopted, including any proposed regulatory language. The Office notes that the Register has repeatedly declined to recommend proposed exemptions for space- or format-shifting, finding that proponents failed to establish that format-shifting is a noninfringing use.[222] The Office seeks comment on all aspects of this proposed exemption, including whether, in the past three years, there has been a change in the legal or factual circumstances regarding whether space-shifting and format-shifting are noninfringing fair uses and the effects the proposed exemption would have on the market for or value of the relevant works.

Proposed Subclass 4(c): Digital Service Discontinuation

Two petitions filed by Jayden Milne and Zakaria Zerhouane propose a new exemption to circumvent technological protection measures that control access to audiovisual works where licensed or lawful access to a digital version of the work is discontinued.[223] The petitions seek to allow circumvention of TPMs on physical media, such as those protected by CSS and AACS, as well as ''proprietary [digital rights management], geo-locking, and session-based access controls'' on streaming platforms.[224] Petitioners explain that many distributors who previously made these works accessible are now ''defunct,'' distributors' websites and services ''ended,'' and ''previously available . . . digital copies . . . no longer supported or available.'' [225] For physical media, such as lawfully made and acquired DVDs, expired codes attached to that media ''are not renewed or replaced'' or distributors ''have since dissolved, entered bankruptcy, or ceased operations.'' [226] The petitions limit circumvention to individual owners, ''individual viewers, researchers, archivists, and preservationists,'' for personal and noncommercial uses, including preservation.[227]

The Office seeks comment on whether the proposed exemption should be adopted, including any proposed regulatory language. Commenters are encouraged to develop the legal and factual administrative record in their initial submissions, including describing with specificity the relevant TPMs for all proposed media and platforms containing access controls they seek to circumvent and whether the presence of the TPMs is adversely affecting noninfringing uses, whether eligible users may access the works through alternate channels that do not require circumvention, and the legal basis for concluding that the proposed uses are likely to be noninfringing. Similarly, commenters should address any anticipated effect that circumvention would have on the market for or value of the relevant copyrighted works.

*E. Proposed Class 5: Audiovisual Works—Personal Playback*

Referencing 17 U.S.C. 110(11), added to the Copyright Act by the Family Movie Act of 2005,[228] Jayden Milne petitions for a new exemption to allow circumvention of access controls protecting motion pictures (including television programs, videos, and supplementary motion-picture works) on DVDs, Blu-ray discs, and Ultra HD Blu-ray discs for purposes of ''apply[ing] automatic mute or skip instructions to limited portions of audio or video content . . . during contemporaneous private-home

[212] 2021 Recommendation at 83–98.

[213] *Id.* at 94.

[214] 86 FR 59627, 59633 (Oct. 28, 2021) (2021 final rule); 89 FR 85437, 85440 (Oct. 28, 2024) (2024 final rule).

[215] *See supra* Section II.H.

[216] Jamlark, LLC (''Jamlark'') Class 4(b) Pet. at 2; Stakebake & Stakebake Class 4(b) Pet. at 2.

[217] Stakebake & Stakebake Class 4(b) Pet. at 2.

[218] *Id.*

[219] Jamlark Class 4(b) Pet. at 2.

[220] *Id.*

[221] *Id.;* Stakebake & Stakebake Class 4(b) Pet. at 2.

[222] *See* 2021 Register's Recommendation at 99–101; 2018 Recommendation at 111–28; 2015 Recommendation at 107–26; 2012 Recommendation at 157–66; 2006 Recommendation at 69–72; 2003 Recommendation at 126–41.

[223] Milne Class 4(c) Pet. at 2; Zerhouane Class 4(c) Pet. at 2.

[224] Milne Class 4(c) Pet. at 2; Zerhouane Class 4(c) Pet. at 2.

[225] Milne Class 4(c) Pet. at 2; Zerhouane Class 4(c) Pet. at 2.

[226] Milne Class 4(c) Pet. at 2; Zerhouane Class 4(c) Pet. at 2.

[227] Milne Class 4(c) Pet. at 2; Zerhouane Class 4(c) Pet. at 2.

[228] Public Law 109–9, sec. 202(a), 119 Stat. 218, 223 (2005).

playback directly from the authorized disc.'' [229] The proposed exemption contemplates the use of either ''preexisting or household-authored'' instructions to filter the work, and would only apply to a particular disc edition when licensed filtering products and services or noncircumventing methods are unavailable.[230] The petition limits circumvention to individual owners ''in continuous lawful possession'' of the discs, including owners acting ''by or at the direction of a member of the owner's private household.'' [231]

The Office seeks comment on whether this proposed exemption should be adopted, including any proposed regulatory language. Commenters should include information on whether TPMs are adversely affecting noninfringing uses, including whether eligible users may filter discs without circumventing TPMs.

*F. Proposed Class 6: Audiovisual Works—Public Domain Works*

Jayden Milne petitions for a new exemption to allow circumvention of technological measures that control access to a combination of material—both works protected by copyright and motion pictures in the public domain—for the purpose of copying the public domain material from a ''lawfully made and lawfully acquired'' DVD, standard Blu-ray disc, or Ultra HD Blu-ray disc for preservation purposes.[232] The petition would limit the exemption to individuals who ''lawfully own, rent, borrow, or are otherwise authorized to possess, access, and use the source disc,'' and have determined that, after reasonable effort, no equivalent is ''reasonably available at a fair price.'' [233] Milne explains that an exemption is needed because access controls continue to prevent circumvention of physical optical discs, despite an increasing number of copyrighted works falling into the public domain since 2019.[234]

The Office notes that in the 2012, 2010, and 2003 triennial rulemakings, the Register declined to recommend proposed exemptions for literary and audiovisual works in the public domain and public domain works generally, finding that the circumvention prohibition does not apply to public domain works because they are not protected by copyright law, a requirement of the prohibition under section 1201.[235] However, the Register acknowledged that ''additional questions may arise'' and ''further information would be required'' when technical measures controlling access to public domain material also control access to other works protected by copyright.[236]

The Office seeks comment on whether the proposed exemption should be adopted, including any proposed regulatory language. Commenters are encouraged to develop the legal and factual administrative record in their initial submissions, including whether eligible users may access the public domain works through alternative means that do not require circumventing other non-protected formats and examples of access controls protecting a combination of copyrighted and public domain material.

*G. Proposed Class 7: Computer Programs—Jailbreaking*

Three petitions were filed for new or expanded exemptions covering computer programs, for the purpose of adding, removing, or modifying software on consumer electronic devices (''jailbreaking'').[237] FULU seeks to expand the current exemption for smart TVs to permit the ''removal of software,'' specifically, automatic content recognition software.[238] In a separate petition, FULU seeks a new exemption for consumer devices to ''disable, remove, or prevent the rendering of advertising surfaces . . . pushed onto the user interface . . . after the device was originally sold.'' [239] Finally, Public Knowledge and FULU jointly seek a new exemption for ''consumer video home-monitoring devices'' to ''allow the device to route video data to a local server.'' [240]

The Office seeks comment on whether these proposed exemptions should be adopted, including any proposed regulatory language. Commenters should include information clearly describing the computer programs at issue, the TPMs that control access to those programs, and whether the prohibition on circumvention adversely affects users in their ability to make noninfringing uses of those programs. With respect to the petition for jailbreaking to remove advertising from consumer devices, such as ''smart home appliances, smart TVs, voice-assistant devices, e-readers, media players, and car consoles,'' [241] the Office invites comments on whether there are sufficient similarities across devices—in computer programs, TPMs, and adverse effects—to support a single exemption. Comments should also include discussion of the extent to which the proposed activities may or may not be addressed by current regulatory exemptions.

*H. Proposed Class 8: Computer Programs—Repair*

Several organizations and one individual submitted petitions for new or expanded exemptions relating to diagnosis, maintenance, repair, and modification of software-enabled devices.[242] Additionally, the Office received multiple petitions to renew the existing exemption of computer programs in or controlling medical devices or systems for diagnosis, maintenance, or repair of those devices or systems.[243] As discussed, the Office has determined that there is meaningful opposition to this renewal petition.[244] Therefore, the Office will evaluate all the proposed repair-related uses of copyrighted works on medical devices and systems together as a potential new exemption.

For reasons of administrative efficiency, the Office has grouped all repair-related proposals into one overall class with two subclasses: one subclass for medical device repair and one covering repair-related proposals for other types of devices and equipment. Commenters may submit a single comment on Class 8, which may address one or both subclasses.[245] Supporting evidence must be sufficient to establish an adverse effect on noninfringing uses with respect to each subclass.

Proposed Subclass 8(a): Device and Equipment Repair

FULU, and Public Knowledge and iFixit jointly, filed petitions to expand

[229] Milne Class 5 Pet. at 2.

[230] *Id.*

[231] *Id.*

[232] Milne Class 6 Pet. at 2.

[233] *Id.*

[234] *Id.*

[235] 2012 Recommendation at 13–15; 2010 Recommendation at 255–56; 2003 Recommendation at 99–102.

[236] 2012 Recommendation at 15; 2003 Recommendation at 100–01.

[237] FULU Foundation (''FULU'') Class 7 Pet. #1 at 2 (Automatic Content Recognition); FULU Class 7 Pet. #2 at 2 (Advertising); Public Knowledge & FULU Class 7 Pet. at 2; *see* 37 CFR 201.40(b)(9)–(12) (listing the current jailbreaking exemptions).

[238] FULU Class 7 Pet. #1 at 2 (proposing a modification of 37 CFR 201.40(b)(10)).

[239] FULU Class 7 Pet. #2 at 2.

[240] Public Knowledge & FULU Class 7 Pet. at 2.

[241] FULU Class 7 Pet. #2 at 2.

[242] 37 CFR 201.40(b)(13), (15)–(17).

[243] *See* BMI Medical Device Repair Renewal Pet.; Caylor Medical Device Repair Renewal Pet.; Crothall Medical Device Repair Renewal Pet.; ECMS Medical Device Repair Renewal Pet.; iFixit Medical Device Repair Renewal Pet.; ImageOne Medical Device Repair Renewal Pet.; Shannon Medical Device Repair Renewal Pet.; Trimedx Medical Device Repair Renewal Pet.; 37 CFR 201.40(b)(17).

[244] *See supra* Section II.S.

[245] *See infra* Section IV.A.3 (discussing page limits for each of the three rounds of written public comments).

the exemption for computer programs that control devices designed primarily for use by consumers for diagnosis, maintenance, or repair of the device.[246] FULU proposes expanding the exemption to permit users to access and modify consumer device programs, which ''are typically stored in the device's firmware or accessed through cloud-based services/servers,'' so they can ''continue to use the product for its intended purpose'' when the manufacturer ''(a) has discontinued service or software support essential to its use; or (b) has ceased business.'' [247] The proposed exemption would ''include[] the ability for consumers to maintain, repair, install, or substitute the discontinued software for third-party or community-developed software.'' [248] Public Knowledge and iFixit propose expanding the consumer device repair exemption, which covers ''diagnosis, maintenance, [and] repair,'' to include ''reconfiguration, continued use, or reuse of the device or system'' and extend to ''business and enterprise IT devices such as laptops, [secure cell phones,] servers, and storage.'' [249] They note that it is unclear if the existing exemption applies to devices purchased in bulk for employees or students; and they propose that eligible users of the expanded exemption also include ''enterprise, industrial, and government owners and operators of these devices.'' [250] The Office notes that in 2024, the Register considered a similar proposal and declined to conclude that users were being adversely affected from engaging in noninfringing diagnosis, maintenance, and repair of enterprise IT based on the rulemaking record.[251] In this cycle, the Office seeks additional examples of how users are adversely affected by the prohibition against circumventing TPMs to engage in the proposed activities.

The Repair Association and iFixit jointly filed a petition proposing a new exemption to maintain and repair ''software-enabled fixtures or integrated systems installed on commercial, institutional, and multi-family premises.'' [252] The exemption would ''include[] the ability to maintain, repair, install, or substitute the discontinued software for third-party or community-developed software.'' [253] Eligible users would be owners and operators of the equipment.[254] The Office notes that, in previous rulemaking cycles, proponents of broad exemptions to repair commercial or industrial systems cited building systems as examples.[255] As the Register previously observed that some users appeared to have adequate alternatives to circumvention for engaging in repair-related activities,[256] the Office seeks comments that show the extent to which these activities are being adversely affected by the prohibition against circumvention.

In a second petition, the Repair Association and iFixit jointly propose a new exemption for the circumvention of TPMs that ''control software-enabled scientific and laboratory equipment for purposes of diagnosis, maintenance, calibration, and physical repair,'' including ''installation or substitution of discontinued software with third-party or community-developed software.'' [257] To the extent necessary for these purposes, the proposed exemption would permit ''access and modification'' of ''copyrighted programs . . . stored in the instrument's firmware or accessed through manufacturer-controlled software and servers.'' [258]

The Repair Association, iFixit, and Bull Moose Project jointly petition for a new exemption to ''permit access and modification to software operating industrial equipment'' or ''software-enabled manufacturing equipment and integrated manufacturing-facility systems'' for diagnosis, modification, maintenance, and repair.[259] The Office notes that in the last rulemaking, the Register found that ''the rulemaking record does not support a broad proposed class that would cover all commercial and industrial equipment and devices because it is unclear that all such equipment and devices share sufficient commonalities and that the users are similarly situated.'' [260] In addition, the Register stated that the ''overall the record [was] inconclusive as to whether users [of programmable logic controllers] are being adversely affected.'' [261] Accordingly, the Office seeks comment on whether there are sufficient commonalities among the equipment and systems in the proposed class as well as comments demonstrating the extent to which users are being adversely affected from engaging in repair-related activities.

Proposed Subclass 8(b): Medical Device Repair

As previously discussed, the Office concluded that the renewal petitions for the current medical device repair exemption faced meaningful opposition, and therefore, must be evaluated as a new exemption and proceed through the normal rulemaking process, including the three rounds of public comment. Those renewal petitions are discussed in Section II.S and are incorporated into Class 8(b) with petitions for expanding the existing exemption.

Regarding proposed exemption petitions, Marshall Shannon petitions to expand the exemption to access computer programs that are contained in and control the functioning of medical devices or systems, and related data files, for diagnosis, maintenance, or repair.[262] Shannon requests ''clarification'' that the current exemption already covers or, alternatively, proposes that the exemption be expanded to ''expressly cover[ ] owner-authorized installation, reinstallation, software setup, operating-system and application restoration, relocation, commissioning, calibration, performance verification, service-data access, cybersecurity-related reconfiguration, and return to service for new, used, and resold medical devices.'' [263] Shannon further seeks to expand the class of works to include ''[c]omputer programs that operate, control, diagnose, monitor, configure, calibrate, install, service, maintain, test, or restore medical devices or systems, including related service interfaces, logs, configuration data, certificates, credentials, utilities, and technical materials'' for the purposes of ''lawful diagnosis, installation, maintenance, repair, calibration, cybersecurity, or return to service.'' [264] In addition,

[246] FULU Class 8(a) Pet.; Public Knowledge & iFixit Class 8(a) Pet.; 37 CFR 201.40(b)(15).

[247] FULU Class 8(a) Pet. at 2.

[248] *Id.*

[249] Public Knowledge & iFixit Class 8(a) Pet. at 2.

[250] *Id.*

[251] 2024 Recommendation at 157–58.

[252] Repair Association & iFixit Class 8(a) Pet. #1 (Commercial Premises Equipment) (listing ''commercial HVAC, battery energy-storage systems, elevator systems, building management systems, and other similar equipment'' as examples).

[253] *Id.* at 2.

[254] *Id.*

[255] 2024 Recommendation at 137 n.667 (''automated building management systems''); 2021 Recommendation at 194 (''facility management systems controlling commercial building access'').

[256] 2021 Recommendation at 197 n.1083.

[257] Repair Association & iFixit Class 8(a) Pet. #2 at 2 (Scientific and Laboratory Equipment).

[258] *Id.*

[259] Repair Association, iFixit, & Bull Moose Project Class 8(a) Pet. at 2 (listing ''programmable logic controllers and process-control systems, production line control systems, industrial robots and motion controllers, additive-manufacturing equipment, semiconductor-fabrication equipment,'' and other systems and equipment as examples).

[260] 2024 Recommendation at 143.

[261] *Id.* at 155.

[262] Shannon Medical Device Repair Renewal Pet. at 3; 37 CFR 201.40(b)(17) (discussing the current medical device or system diagnosis, maintenance, or repair exemption). *See supra* note 134 (explaining that the Office will consider portions of Shannon's submission that seek ''clarification or a modified exemption'' as a petition for an expanded exemption).

[263] Shannon Class 8(b) Pet. at 3.

[264] *Id.*

because Trimedx lists ''regulatory compliance'' among the purposes covered by the existing exemption notwithstanding that that use is not expressly covered by the exemption, the Office considers it here as a proposed expansion.[265]

The Office seeks comments and documentary evidence that explain, under the current exemption and proposed expansions, the type of works (*i.e.,* types of computer programs and related data files) that would be covered; how those works are configured on medical devices and systems; for each type of work, whether the current and proposed uses are noninfringing; and how the adverse effects analysis applies to the different types of works and uses. Commenters should submit evidence specific to the issues and circumstances raised by the proposed exemption, identify any materials from prior proceedings on which they rely, and explain how those materials bear on the proposed exemption. The Office will assess the comments and evidence developed in the current proceeding, together with relevant records from previous proceedings, in deciding whether and to what extent to recommend adoption of the proposed exemption.[266]

Commenters should explain the extent to which each proposed activity would require expansion of the current regulatory exemption for medical device repair. When addressing each proposed activity or type of work that is not covered by the current exemption, commenters should explain why that particular use is likely to be noninfringing as well as how that use is adversely affected by the prohibition against circumvention. Commenters are also encouraged to submit documentary evidence demonstrating how medical device software and other copyrighted works that a petitioner seeks to access via circumvention are configured.[267]

Finally, regarding the proposed new exemption petitions for each subclass, the Office notes that most of them include ''modification'' among the proposed uses. Outside of the vehicle repair exemption, which permits ''lawful modification of a vehicle or vessel function,'' [268] the Register has consistently declined to recommend that repair-related exemptions extend to device modification due to uncertainty about whether modifications of device software, as opposed to physical modifications, would infringe the software owner's right to prepare derivative works.[269] Commenters for each subclass should explain whether ''modification'' is likely to be noninfringing for the various device types described in the petitions. Because three of the current exemptions define ''repair'' as ''the restoring of the device to the state of working in accordance with its original specifications and any changes to those specifications authorized for that device,'' [270] commenters should also address whether this definition should apply to any proposed exemption for Class 8(a) and 8(b) when discussing their proposed regulatory language.

### *I. Proposed Class 9: Video Games—Operating System Incompatibility*

Ken Austin petitions for a new exemption to permit circumvention by ''individual owners of video games'' which have ''DRM [that] no longer function[ ] properly'' due to ''incompatibility or other errors'' with modern computers' operating systems.[271] The petition explains that ''many old [video] games released for Windows on CD and DVD'' rely on DRM, such as SafeDisc, that ''no longer work[ ] on modern versions of [Windows] operating system[s],'' due to operating systems flagging games' TPMs as security threats.[272] Austin also states that a subset of these games ''lack official patches to remove or repair the faulty DRM, or new, working versions that are reasonably available for purchase.'' [273]

The Office notes that last cycle it considered and rejected a substantively identical proposal regarding video games that were no longer functional due to incompatibility with computer operating systems.[274] That petition ''was not supported by a sufficient record in [last cycle's] proceeding,'' and the Office lacked evidence to determine that ''the harm identified . . . involve[d] 'distinct, verifiable and measurable impacts' occurring in the marketplace.'' [275] The Office encourages proponents to develop a more robust administrative record. Commenters should describe with specificity the relevant TPMs and whether their presence is adversely affecting noninfringing uses, including identifying whether eligible users may access the software through alternate channels that do not require circumvention, the basis for concluding that the proposed uses are likely to be noninfringing, and examples of games that may be subject to the proposed exemption. In general, the Office seeks comment on whether the proposed exemption should be adopted, including any proposed regulatory language.

### *J. Proposed Class 10: Video Games—Network Play*

Dan Elkins petitions to expand the current exemption covering continued play of video games.[276] The petition proposes that ''personal, local gameplay'' be expanded to include online gameplay and permit circumvention of access controls on lawfully acquired games ''to interoperate with [an] independently implemented replacement network infrastructure'' when the copyright owner has ''discontinued, materially degraded, or replaced external server functionality originally used by those games'' without providing ''materially equivalent original functionality.'' [277] The proposed expansion would not permit ''unauthorized reproduction or distribution of games, unauthorized access to copyright-owner servers, or copying of proprietary server software'' and would leave ''[m]odern entitlement and authentication mechanisms'' intact.[278]

The Office notes that when considering the original exemption, the Register concluded that ''proponents ha[d] not satisfied their burden with respect to a need for an exemption for continued online multiplayer play.'' [279] The Office seeks comment on whether the proposed expansion should be

[265] Trimedx Medical Device Repair Renewal Pet. at 4; *see supra* note 134 (discussing the Office's treatment of Trimedx's renewal petition discussing ''regulatory compliance'' as a proposed expansion and beyond the scope of the streamlined renewal process).

[266] *See* Section 1201 Study at 110 (recognizing the Office's discretion to take administrative notice of evidence); *id.* at 112 (including evidence administratively noticed by the Office in the rulemaking record); *id.* at 143 n.776 (explaining, in its discussion of renewal, that de novo assessment can draw on a prior record if parties provide a basis to assess its continuing relevance).

[267] *See MITA,* slip op. at 13 (concluding that there was no record in the 2018 and 2021 triennial rulemakings to support ''the proposition that there is a distinct body of repair software independent from the clinical-operation software and that it occupies its own standalone market'').

[268] 37 CFR 201.40(b)(13).

[269] *See* 2024 Recommendation at 158; 2021 Recommendation at 204–06; 2018 Recommendation at 206–08.

[270] 37 CFR 201.40(15)(ii), (16)(ii); *see* 37 CFR 201.40(17)(ii) (applying to a ''device or system''); *cf.* 17 U.S.C. 117(d).

[271] Austin Class 9 Pet. at 2.

[272] *Id.*

[273] *Id.*

[274] *See* 2024 Austin Class 6(b) Pet.; 2024 Recommendation at 172–73.

[275] 2024 Recommendation at 172–73 (quoting Commerce Comm. Report at 37).

[276] Elkins Class 10 Pet. at 2; 37 CFR 201.40(b)(19)(i)(A).

[277] Elkins Class 10 Pet. at 2.

[278] *Id.*

[279] 2015 Recommendation at 337, 345–46.

adopted, including any proposed regulatory language. Commenters responding to this petition should include information on whether there have been new factual or legal developments that would support an expansion and whether its scope should be modified, including whether alternate methods to access online play exist that do not require circumvention. Comments should also describe with specificity the relevant TPMs, their location, and whether the prohibition on circumvention is adversely affecting noninfringing uses, the methods of circumvention sought, whether persons ''developing or operating replacement infrastructure'' for owners are users within the meaning of 1201(a)(1), and examples of games potentially subject to the exemption.[280] In general, the Office seeks comment on whether the proposed exemption should be adopted, including any proposed regulatory language.

Proposed New or Expanded Exemptions Not Considered

As stated in the NOI, the Office will not at the NPRM phase ''reject any petitioned-for exemption unless it fails to meet the threshold requirements of section 1201(a).'' [281] After reviewing the petitions that seek new exemptions, the Office observes that two petitions cannot be granted as a matter of law, as they fail to allege ''a particular class of works'' or ''distinct, verifiable and measurable impacts'' on noninfringing uses.[282]

The first petition proposes that ''researchers, journalists, educators, students, investigators, legal professionals, archivists, nonprofit workers, and individuals'' be permitted to circumvent ''online audiovisual works, web pages, images, PDFs, and related metadata'' for ''documentation, research, evidence preservation, citation, accessibility, archival review, journalism, education, legal investigation, or personal recordkeeping'' purposes.[283] The relevant barriers to access include TPMs and ''streaming-only delivery, expiring URLs, platform restrictions, embedded players, account-gated access, anti-download controls, disappearing or modified online content, and formats that prevent users from saving evidence-quality local copies of materials they can lawfully view.'' [284]

The second petition proposes ''a class-wide remedy for motion pictures on protected consumer optical discs'' where users, ''[un]limit[ed] . . . by ownership or occupation,'' can circumvent the works for unrestricted purposes, including ''private disc-present playback without a fixed copy; private-home filtering under [section] 110(11); criticism or comment using short portions; disability access; public-domain-only use; qualifying replacement or preservation; and restoration of a specifically promised bundled copy.'' [285] The relevant barriers to access include CSS on DVDs, AACS on HD DVD and standard Blu-ray discs, and AACS2 on Ultra HD Blu-ray discs.[286]

These proposed exemptions are beyond the Librarian's authority to adopt because they do not meet the statutory requirements of an exemption authorized by section 1201. As previously discussed, section 1201 requires that any exemption adopted as part of the triennial rulemaking be limited to ''a particular class of copyrighted works.'' [287] Legislative history explains that Congress intended the phrase to encompass ''a narrow and focused subset of the broad categories of works . . . identified in [s]ection 102 of the Copyright Act.'' [288] Therefore, the Office uses the section 102 categories as a starting point and refines the proposed classes by other criteria, such as the types of TPMs used or the types of uses. As Congress explained, while the category of ''literary works'' under section 102(a)(1) ''embraces both prose creations such as journals, periodicals or books, and computer programs of all kinds,'' ''[i]t is exceedingly unlikely that the impact of the prohibition on circumvention of access control technologies will be the same for scientific journals as it is for computer operating systems.'' [289] Congress concluded the ''two categories of works . . . do not constitute a single 'particular class' for purposes of'' section 1201(a)(1).[290] Neither the first petition (which proposes an exemption for all or nearly all works available online) nor the second petition (which proposes an exemption for all motion pictures with an express lack of limits as to users and uses) [291] propose an exemption for a single particular class for the purposes of section 1201.

''Determining the appropriate scope of a 'class of works' for an exemption may also involve consideration of the adverse effects an exemption may have on the market for or value of copyrighted works.'' [292] Adverse effects may be shown by demonstrating ''distinct, verifiable and measurable impacts'' on noninfringing uses.[293] The second petition contains multiple undefined uses that lack any clear bounds and is premised on the concept that they should not have to show adverse effects use-by-use. The Register and the Librarian are unable to analyze the adverse effects of unbounded uses in order to determine whether an exemption could be granted.[294] The Office's determination not to offer this petition for comment does not foreclose consideration of any of the listed uses: the petition itself states that ''each narrower alternative can stand alone,'' [295] and each of those uses were filed by the same petitioner as separate petitions for new exemptions, which the Office has put forth for consideration above.[296]

Because these two petitions fall outside the scope of exemptions that the Register can recommend and the Librarian can adopt under section 1201, the Office declines to put these petitions forward for public comment.

[280] Elkins Class 10 Pet. at 2.

[281] NOI at 34798 (discussing an overview of the triennial rulemaking process) (citing 79 FR 73856, 73859 (Dec. 12, 2014)).

[282] 17 U.S.C. 1201(a)(1)(B); Commerce Comm. Report at 37. The Register has repeatedly declined to recommend proposed exemptions that have failed to define the class of works to be covered with sufficient particularity. *See, e.g.,* 2018 Recommendation at 131–32; 79 FR at 73859; 2006 Recommendation at 17–19; *see also* 85 FR at 65308–09 (allowing a proposed exemption that sought to permit circumvention of access controls across all classes of copyrighted works for accessibility purposes to proceed to the public comment phase ''[i]n light of [its] important public policy considerations'' and subject to substantial provisions regarding the need to develop proposed exemptions within the Librarian's authority to adopt).

[283] MuCache Multiple Works Pet. at 2.

[284] *Id.*

[285] Milne Class-Wide Relief Pet. at 2.

[286] *Id.*

[287] 17 U.S.C. 1201(a)(1)(C).

[288] Commerce Comm. Report at 38; *see also id.* at 36 (explaining that the rulemaking ''allow[s] the enforceability of the prohibition against the act of circumvention to be *selectively* waived, for limited time periods, if necessary to prevent a diminution in the availability to individual users of a *particular category* of copyrighted materials'' (emphasis added)); Staff of H. Comm. on the Judiciary, 105th Cong., Section-by-Section Analysis of H.R. 2281 as Passed by the United States House of Representatives on August 4th, 1998, at 6 (''[T]he main focus of the rulemaking proceeding will be on whether a substantial diminution of that availability is *actually occurring* in the market for *particular classes* of copyrighted works.'' (emphasis added)).

[289] Staff of H. Comm. on the Judiciary, 105th Cong., Section-by-Section Analysis of H.R. 2281 as Passed by the United States House of Representatives on August 4th, 1998, at 7.

[290] *Id.*

[291] Milne Class-Wide Relief Pet. at 2 (''These uses are examples of the recurring problem, not limits on the primary request.'').

[292] 2021 Recommendation at 9.

[293] Commerce Comm. Report at 37.

[294] *Id.*

[295] Milne Class-Wide Relief Pet. at 2.

[296] *See supra* Sections III.B–F.

## IV. Phases of the Tenth Triennial Rulemaking

A comprehensive administrative record for the section 1201 triennial rulemaking is developed through written comments, public hearings, post-hearing questions, and *ex parte* meetings. The Register then makes her recommendation to the Librarian, who adopts a final rule. Each future phase of the administrative process is described below.[297]

Late filed submissions in *any* phase of the rulemaking, including amendments or supplements thereto, will not be accepted without a showing of good cause, and their acceptance is subject to the Office's discretion.[298] Participants should timely file complete comments using the appropriate form. Informational guides explaining section 1201 and the rulemaking process can be found on the Office's section 1201 rulemaking web page at *https://www.copyright.gov/1201.*

### *A. Public Comment Phase*

This NPRM initiates the second phase of the triennial rulemaking: the public comment phase, which consists of three rounds of written public comments regarding the petitions for new exemptions and any meaningfully opposed renewal petitions. Commenters should present their complete legal and evidentiary case in support of or in opposition to the proposed exemption. In this proceeding, the Office is initiating a page limit requirement for each of the three rounds of written public comments.

#### 1. Substance of Comments

Parties wishing to address proposed exemptions, including the one meaningfully opposed renewal petition, in written comments should familiarize themselves with the substantive legal and evidentiary standards for the granting of an exemption under section 1201(a)(1), as described in the **ADDRESSES** section of this notice above. In addressing factual matters, commenters should be aware that the Office favors specific, real-world examples supported by evidence over hypothetical observations. Commenters should describe with specificity the TPMs that control access to the work, the method of circumvention of those TPMs, whether their presence is adversely affecting noninfringing uses, and whether eligible users may engage in the proposed use through alternate means that do not require circumvention. In general, the Office seeks comment on whether these proposed exemptions should be adopted, including any proposed regulatory language.

Commenters' legal analysis should explain why the proposal meets or fails to meet the criteria for an exemption under section 1201(a)(1), including why the uses sought are or are not noninfringing as a matter of law. The legal analysis should also discuss statutory or other legal provisions that could impact the necessity for or scope of the proposed exemption. Legal assertions should be supported by statutory citations, relevant case law, and other pertinent authority. In cases where a class proposes to expand an existing exemption, participants should focus their comments on the legal and evidentiary bases for modifying the exemption, rather than the underlying exemption. As discussed above, the Register intends to recommend all but one current temporary exemption for renewal, which was meaningfully opposed. That petition will be subject to three rounds of public comment.

#### 2. Comment Submission Instructions and Three Rounds of Written Public Comment

To ensure a clear and definite record for each of the proposals, separate submissions must be submitted for each proposed class and not combined. Accordingly, the same party may submit multiple written comments on different proposals. The Office acknowledges that the requirement of separate submissions may require commenters to repeat certain information across multiple submissions, but concludes that the administrative benefits of creating a self-contained, separate record for each proposal justify the modest added effort.

The first round of public comment is limited to submissions from proponents (*e.g.,* those who proposed new exemptions during the petition phase or provide the legal and evidentiary basis for them during the public comment phase) and other members of the public who support the adoption of a proposed exemption. Those who neither support nor oppose an exemption may also comment with pertinent information. Proponents should present their complete affirmative case for an exemption during the initial round of public comment, including complete legal and evidentiary support.

The second round of public comment seeks comments from those who oppose a proposed exemption; these commenters should present the full basis for their opposition, including complete legal and evidentiary support. The third round of public comment is limited to reply comments from those permitted to comment in the first round, addressing arguments and evidence presented by others during prior rounds. Reply comments should not raise new issues or evidence.[299]

#### 3. Comment Page Limit

In this proceeding, the Office is establishing a page limit for each of the three rounds of written public comments per class. Each commenter may submit a maximum of twenty-five (25) pages, in at least 12-point type, per class per round of comments, except for Proposed Class 8: Computer Programs—Repair, where comments submitted for each subclass should total twenty-five (25) pages or less.[300] The limitation applies to all comments, including jointly submitted comments.[301] This page limit does not apply to documentary evidence; specifically, those containing material authored by persons other than the comment submitters (*e.g.,* affidavits, exhibits, letters).

Commenters wishing to exceed the page limit must contact the Office, using the contact information contained within the **FOR FURTHER INFORMATION CONTACT** section of this NPRM, prior to submission.[302] The decision to grant a commenter's request is subject to a showing of good cause and at the Office's discretion.

The Office has determined that the authority to impose this page limit is within section 1201(a)(1) and is further supported by its accompanying legislative history. As the Office stated in its *Section 1201 of Title 17* study, ''section 1201 appears to give the Office considerable flexibility to define and

[297] *See also* NOI at 34796 (discussing an overview of the triennial rulemaking process).

[298] *See, e.g.,* 2024 Recommendation at 20 n.72 (''[T]he Register has no obligation to consider untimely comments.'').

[299] Newly raised issues and evidence are not permitted in the third round of written public comments or in any subsequent rulemaking phase. NOI at 34796.

[300] The Office established this page limit after reviewing comments from the previous two triennial rulemakings and determining that the overwhelming majority of comments were fewer than ten pages (excluding documentary evidence) and reviewing other federal agencies' page limits. *See, e.g.,* 49 CFR 553.21, 800.37 (discussing the National Highway Traffic Safety Administration's and the National Transportation Safety Board's fifteen-page limit for comments submitted in response to agency rulemakings). The page limit applies separately to each proposed class in each round. Pages submitted in one class do not count toward the limit in any other class.

[301] A submitter who has reached the page limit for a class may not file, individually or jointly with another, any additional submission addressing that class during the same comment round.

[302] *See supra* page 2.

tailor the rulemaking process.'' [303] The relevant statutory provisions do not ''mandate [the] specific processes that the Register must follow'' for conducting the rulemaking,[304] beyond ''report[ing] and comment[ing] on . . . her views in making'' recommendations to the Librarian.[305] Corresponding legislative history also evidences Congress's intent that the specific rulemaking procedures beyond ''permit[ting] interested persons an opportunity to participate through the submission of written statements, oral presentations at one or more of the public hearings, and the submission of written responses to the submissions or presentations of others,'' lie within the Office's purview.[306] The Office concludes that the page limit is consistent with its informal rulemaking requirements under the Administrative Procedure Act [307] and is a needed change to improve the rulemaking process, ''while maintaining procedural rules necessary for it to administer the rulemaking efficiently within the statutorily mandated period.'' [308]

*B. Public Hearings Phase*

After the public comment phase, the Office will hold online public hearings in spring 2027. The hearings will focus on unresolved issues material to proposed exemptions that the Office finds unclear or underdeveloped in the written record, and may offer the opportunity to introduce demonstrative evidence. Demonstrative evidence is limited to demonstrations that illustrate uses, technological measures, or methods of circumvention already described in the written record; it is not a vehicle for new factual showings. Participants may not submit additional written evidence during or after the hearings or introduce new evidence or arguments at the hearings. A separate notice providing details about the hearings and how to participate will be published in the **Federal Register**.

1. Post-Hearing Questions

Following the hearings, the Office may direct written questions to specific participants to discuss discrete issues in particular classes, including suggestions regarding regulatory language. Although submission deadlines are provided, responses to these questions are voluntary. Responses will be posted on the Office's website as part of the public record.

2. Ex Parte Communication

As in prior proceedings, the Office will permit *ex parte* communications after the conclusion of the hearings. Participating parties will be required to follow the Office's regulation on *ex parte* communications.[309] No *ex parte* communications with the Office regarding this proceeding will be permitted before the hearings have concluded or at any time outside of the permitted period. The Office will identify the specific time period it will accept requests for *ex parte* communications in the notice it publishes to initiate the public hearings phase.

*C. Register's Recommendation and Librarian's Final Rule*

The Office will analyze the complete administrative record, which may include submissions from other parts of the federal government.[310] Following consultation with the National Telecommunications and Information Administration, the Register will issue her written recommendation to the Librarian as to which exemptions are warranted, including proposed regulatory text for adoption as a final rule. The Librarian, after consideration of the Register's recommendation, will adopt a final rule announcing any exemptions.[311]

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[303] Section 1201 Study at 107.

[304] *Id.* at 24.

[305] 17 U.S.C. 1201(a)(1)(C).

[306] H.R. Rep. No. 106–464, at 149 (1999); *see also* H.R. Rep. No. 105–796, at 64 (1998) (''It is the intention of the conferees that, as is typical with other rulemaking under title 17, and in recognition of the expertise of the Copyright Office, the Register of Copyrights will conduct the rulemaking, including providing notice of the rulemaking, seeking comments from the public, consulting with the Assistant Secretary for Communications and Information of the Department of Commerce and any other agencies that are deemed appropriate, and recommending final regulations in the report to the Librarian.'').

[307] 5 U.S.C. 553(c) (requiring, absent specific exceptions, that an agency ''give interested persons an opportunity to participate in the rule making through submissions of written data, views, or arguments''); *see also* H.R. Rep. No. 106–464, at 149 (explaining that the removal of previous draft legislative language was ''a technical correction to clarify the intent of Congress that the Copyright Office shall conduct the [section 1201] rulemaking . . . as an informal rulemaking proceeding'').

[308] Section 1201 Study at 107.

[309] *See* 37 CFR 201.1(d), 205.24; *see generally Ex Parte Communications,* U.S. Copyright Office, *https://www.copyright.gov/rulemaking/ex-parte-communications/* (last visited Oct. 23, 2026).

[310] *See Letters Between the U.S. Copyright Office and Other Agencies,* U.S. Copyright Office, *https://www.copyright.gov/1201/2024/USCO-letters/* (last visited Oct. 23, 2026); Section 1201 Study at 150–51.

[311] 89 FR at 85445–50.