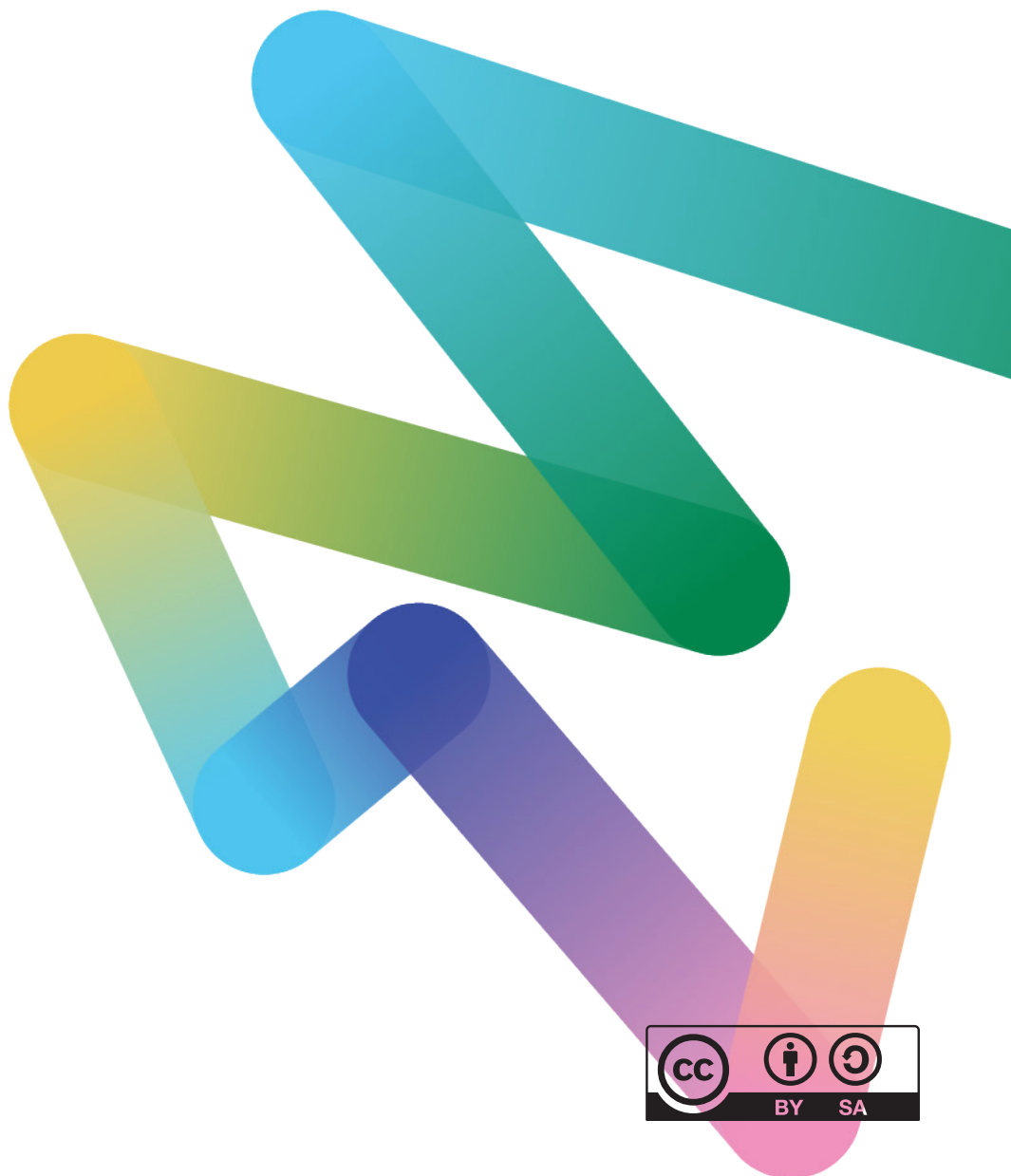




Unbalanced Interests

How the § 1201 Process Ate Itself

MICHAEL WEINBERG



Engelberg Center on Innovation Law & Policy

The Engelberg Center on Innovation Law & Policy at New York University School of Law provides a unique environment where scholars can examine the key drivers of innovation as well as the law and policy that best support innovation. By fostering interdisciplinary and collaborative research on innovation law and policy, the Engelberg Center attracts legal scholars and practitioners, technologists, economists, social scientists, physical scientists, historians, innovators, and industry experts who study the incentives that motivate innovators, how those incentives vary among creative endeavors, and the laws and policies that help or hinder them.

Thanks

Thank you to Aaron Perzanowski, Molly Pushner, Blake Reid, Jason Schultz, and Chris Sprigman for assistance and feedback, the Free Law Project for hosting all of the docket files, and the Copyright Office for maintaining an archive of all of the 1201 proceedings.





The Library of Congress Thomas Jefferson Building and James Madison Building

Contents

Introduction	5
What Was Section 1201(a)(1) Designed to Do?	8
The Triennial Review Process as Backstop	9
The Triennial Review Process Imposes Significant Costs on the Public	12
Proceeding Participants	13
Participants Must Have Resources for Sustained Engagement	14
Participants Engage Repeatedly Over Decades	15
Most Participants Support Exemptions	22
Most Participants Have No Direct Financial Interest in the Outcome	24
Significant Costs	27
1201(a)(1) is Rarely Used by Rights Holders	28
Lawsuits with Facts Matching the Original Intent of 1201(a)(1) Mostly Relate to Enterprise Software	29
Suits Involving Video Games and Unauthorized Retransmission Have Limited Connection to 1201(a)(1)'s Original Intent	30
Most Cases that Include 1201(a)(1) Claims Are Unrelated to Copyright or 1201(a)(1)	31
All Cases Connected to 1201(a)(1)'s Core Purpose Include Underlying Copyright Claims	33
The Reality of 1201(a)(1) Litigation	33
Balancing the Costs and Benefits of 1201(a)(1)	34
Opportunities for Reform	35
Eliminate 1201(a)(1) Entirely	36
Tie 1201(a)(1) Violations to Infringing Activity	36
Simplify the Exemption Process	37
Fund the Existing Process	37
Appendix A: Participant Categories	39
Appendix B: 2024 1201 Process Participants	40
Appendix C: Cases Involving 1201(a)(1) Litigation Claims Filed Between October 8, 2021, and October 28, 2024	45
Appendix D: Report Extras	49

Introduction



Dozens of organizations, spending thousands of hours, to write thousands of pages.

For a period spanning 2023 and 2024, that's what it took for public interest groups to request the government's permission to engage in perfectly legal activities: using short clips of videos in media studies classes, enabling assistive technologies to make ebooks accessible to the blind, or accessing software to perform security research—all lawful under US copyright law's fair use exception.

Why all the extra bureaucratic hassle? Because the materials in question all come with an additional constraint—they are protected with digital locks. A professor hoping to show movie clips in her media studies class must first break those digital locks to copy the clips in question. And that's a problem. Breaking a digital lock can be a violation of the law, even if done to make otherwise-lawful use of a copyrighted work.

And this is why 96 nonprofit organizations, law school clinics, trade associations, academics, companies, and individuals submitted over 1,000 pages of petitions, comments, opposition comments, and reply comments (in addition to participating in three days of public hearings) to the United States Copyright Office during this period, asking for permission to do things that they already are allowed to do under fair use.

Nor is it the first time everyone has come together for this ritual. Since 2000, every three years they must come together to request—and oppose—limited exemptions to a law designed to protect the digital locks that prevent copying of digital works. These exceptions act as an additional round of permission for activities that, but for the use of digital locks, would already be protected under copyright law's fair use exception.

This exercise exists because of 1998's Digital Millennium Copyright Act (DMCA). That law created a specific provision—section 1201(a)(1)—giving additional legal protection to digital locks that prevent copying of digital works, independent of the copyright protection those works already enjoy. Circumventing the locks is a stand-alone violation of the law, even if the reason for the circumvention is perfectly legal.

In order to prevent that additional protection from undermining socially beneficial activity, Congress created a process whereby temporary exemptions to the rules could be granted every three years.¹

Congress originally intended this triennial process to act as “a ‘fail-safe’ mechanism” to “ensure that access [to works] for lawful purposes is not unjustifiably diminished.”² While the process

If the intended purpose of the law was the protection of creative works in the digital economy, the actual effect of the law is the creation of a bureaucratic sinkhole that draws in public interest organizations, academics, industry organizations, and the public every three years.

does serve that goal, it has also become a central focus of copyright policy advocacy in its own right.³ It now claims countless hours of effort from the participants, as well as from Copyright Office staff and other parts of the federal government, on behalf of an ever-expanding collection of exemptions.

At the same time, the law these exemptions are from is only occasionally used in court. Only 12 suits with a meaningful nexus to 1201(a)(1) were filed during the period covered by the previous triennial rules, five of which came from a single manufacturer of high-end design software. Each of these included underlying

copyright claims, arguably making the law redundant. If the intended purpose of the law was the protection of creative works in the digital economy, the actual effect of the law is the creation of a bureaucratic sinkhole that draws in public interest organizations, academics, industry organizations, and the public every three years. They must do this, in part, because the government does not see its role as acting on behalf of the public interest itself.

1 This process involves the Register of Copyrights overseeing a public proceeding. At the end of the proceeding, the Register submits recommendations to the Librarian of Congress. It is then the responsibility of the Librarian of Congress to adopt final recommendations. See US Copyright Office, *Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies*, 86 Fed. Reg. 59627 (Oct. 28, 2021) (to be codified at 37 C.F.R. pt. 201), <https://www.govinfo.gov/content/pkg/FR-2021-10-28/pdf/2021-23311.pdf> [https://perma.cc/59VS-CQ3U]; 17 U.S.C. § 1201(a)(1)(C).

2 H.R. REP. NO. 105-551, pt. 2, at 36 (“House Report”).

3 The reasons for this are many, and largely beyond the scope of this paper. One may be that the process is a rare forum where debates around copyright policy actually result in a concrete outcome.

Ultimately, the resources devoted to the bureaucratic process of exemption-granting almost certainly dwarf those devoted to enforcing the law itself. It is time to reexamine how well this provision “maintain[s] balance between the interests of content creators and information users”⁴ and consider reforming it or abolishing it entirely.



4 House Report at 26.

What Was Section 1201(a)(1) Designed to Do?



The prohibition against circumventing digital locks is contained in 17 U.S.C § 1201(a)(1), itself enacted as part of the larger Digital Millennium Copyright Act (DMCA).

Section 1201(a)(1) establishes a violation for “circumventing a technological measure that effectively controls access to a work [protected by copyright]”.⁵ Essentially, this prohibits breaking or otherwise circumventing a digital lock that protects a work protected by copyright.⁶ (The provision describes digital locks used to limit the use of copyright-protected works as “technological measures,” and in other contexts they are referred to as “Technological Protection Measures (TPMs).” However, as most people know these locks as Digital Rights Management (DRM), in the interest of simplicity, that is the term used in this report.)

Section 1201(a)(1) creates an additional cause of action against copyright infringers. For example, making unauthorized copies of a movie in order to sell those copies to others infringes on the copyright in the movie itself. If that movie happens to be on a DVD, and is therefore protected by DRM, 1201(a)(1) creates an *additional* violation for breaking the digital lock that

5 17 U.S.C. § 1201(a)(1)(A).

6 1201(a)(1) is paired with 1201(a)(2), which creates a violation for “manufactur[ing], import[ing], offer[ing] to the public, provid[ing], or otherwise traffic[ing] in any technology, product, service, device, component, or part thereof” that is primarily designed to circumvent DRM. 17 U.S.C. § 1201(a)(2). While these violations are conceptually linked, this report focused on 1201(a)(1) because only it is subject to the exemption process.

protects the movie as stored on the DVD. Because 1201(a)(1) is an additional violation, the bootlegger in question would be liable for both copyright infringement (making unauthorized copies of the movie) and circumvention (breaking the digital locks designed to prevent unauthorized copying in the first place).⁷

Congress recognized that this new circumvention-based violation could also impose significant burdens on the public and act as a barrier to socially beneficial (and perfectly lawful) activity. In recognition of this, Congress wrote exceptions into the law itself for specific activities of libraries, archives, and educational institutions⁸; law enforcement, intelligence, and other government activities⁹; reverse engineering¹⁰; encryption research¹¹; and security testing¹².

The Triennial Review Process as Backstop

Congress understood that the prohibition against circumventing DRM would impact lawful uses of works beyond those explicitly listed in the statute. However, it did not create a general “fair use exemption” that would allow the breaking of digital locks in order to achieve otherwise legal ends.

Instead, in addition to an enumerated list of specific exceptions, Congress created a triennial process to identify additional activity harmed by the prohibition against circumventing digital locks.¹³ As described in the legislative report accompanying the bill, “[t]he primary goal of the rulemaking proceeding is to assess whether the prevalence of these technological protections [DRM], with respect to particular categories of copyrighted materials, is diminishing the ability of individuals to use these works in ways that are otherwise lawful.”¹⁴

Every three years the Register of Copyrights and the Librarian of Congress consider petitions

7 Congress explicitly designed this provision to stack on top of the underlying act of copyright infringement, “The anti-circumvention provisions (and the accompanying penalty provisions for violations of them) would be separate from, and cumulative to, the existing claims available to copyright owners.” House Report at 24.

8 17 U.S.C. § 1201(d).

9 17 U.S.C. § 1201(e).

10 17 U.S.C. § 1201(f).

11 17 U.S.C. § 1201(g).

12 17 U.S.C. § 1201(j).

13 “Section 1201(a)(1) . . . creates a rulemaking proceeding in which the issue of whether enforcement of the regulation should be temporarily waived with regard to particular categories of works can be fully considered and fairly decided on the basis of real marketplace developments that may diminish otherwise lawful access to work.” House Report at 36.

14 House Report at 37.

from groups asserting that their noninfringing uses of copyright-protected works “are, or are likely to be, adversely affected” by rules preventing them from breaking digital locks.¹⁵ This process is intended to “balance the interests of copyright owners and users, including the personal interests of consumers, in the digital environment.”¹⁶ Although 1201(a)(1) sets a presumption that breaking digital locks is illegal, the triennial review process is an opportunity to allow the breaking of those locks for legitimate purposes.¹⁷ Notably, exemptions granted through this process remain valid only until the completion of the next triennial review process—meaning they are good only for three years.

The mechanics of the review process have evolved over the past two decades, becoming somewhat more streamlined in recent years. The most recent, streamlined version includes the following steps¹⁸:

1. The Copyright Office announces the start of the process. (The most recent process began on June 8, 2023.)
2. Supporters of existing exemptions file a request to renew those exemptions, including an explanation of why the exemption should be renewed. (July 7)
3. Opponents of existing exemptions file comments opposing the renewal of those exemptions. (Supporters of existing exemptions can still file comments supporting the exemptions at this stage.) (August 11)
4. Supporters of new exemptions file a petition for the new exemption, or for the modification of an existing exemption. (August 25)
5. The Copyright Office announces which existing exemptions it will support the renewal of, and which new or existing exemptions will be open to further comment from the public and other government agencies. In the current (2024) round, the Copyright Office supported

15 17 U.S.C. § 1201(a)(1)(C).

16 See US Copyright Office, *Exemptions To Permit Circumvention of Access Controls on Copyrighted Works*, 88 Fed. Reg. 37486 (June 8, 2023) (to be codified at 37 C.F.R. pt. 201), <https://www.govinfo.gov/content/pkg/FR-2023-06-08/pdf/2023-12250.pdf> [https://perma.cc/W97J-QD4M]; House Report at 25-26.

17 There are many criticisms of this process that are outside the scope of this report. Blake Reid summarizes a recent legal challenge, and explains the conceptual framework it is operating within. Blake Reid, *The Chameleonic Library of Congress*, [BlakeReid.org](https://blakereid.org/the-chameleonic-library-of-congress/#more-450) (Oct. 24, 2023), <https://blakereid.org/the-chameleonic-library-of-congress/#more-450> [https://perma.cc/P43R-V27Z].

18 See US Copyright Office, *Exemptions To Permit Circumvention of Access Controls on Copyrighted Works*, 88 Fed. Reg. 37486, at 37487–89 (June 8, 2023) (to be codified at 37 C.F.R. pt. 201), <https://www.govinfo.gov/content/pkg/FR-2023-06-08/pdf/2023-12250.pdf> [https://perma.cc/39QL-26KL].

the renewal of 38 existing exemptions. It failed to support the renewal of a 39th existing exemption because no parties submitted a petition for its renewal.¹⁹ (October 19)

6. Proponents of exemptions file comments in support of those exemptions. (December 22)
7. Opponents of new exemptions file comments in opposition to those exemptions. (February 20, 2024)
8. Supporters of new exemptions file reply comments to the comments opposing the proposed exemption. (March 19)
9. The Copyright Office holds a series of public hearings featuring proponents and opponents of the exemptions. (April 16-18)
10. Hearing participants submit additional responses to questions raised during the hearing. (May 28)
11. The Register of Copyrights releases their recommendations with regard to the exemptions. (October)
12. The Librarian of Congress formally approves and publishes the recommendations. (October 28)

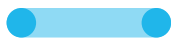
While this final step is required because the statute identifies the Librarian of Congress as the final authority on the matter, it is largely pro forma. The entire process is managed by the Copyright Office, and there is only one instance where the Librarian of Congress reversed a recommendation from the Register of Copyrights.²⁰



19 See US Copyright Office, *Exemptions To Permit Circumvention of Access Controls on Copyrighted Works*, 88 Fed. Reg. 72013, at 72015 (Oct. 19, 2023) (to be codified at 37 C.F.R. pt. 201), <https://www.govinfo.gov/content/pkg/FR-2023-10-19/pdf/2023-22949.pdf> [https://perma.cc/5KHH-YBFU].

20 In 2010, the Librarian of Congress overruled the recommendation of the Register of Copyrights to deny an exemption proposed by the American Federation for the Blind that would allow people who are blind, visually impaired, or print disabled to use text-to-speech software with DRM-protected ebooks. US Copyright Office, *Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies*, 75 Fed. Reg. 43825, at 43838–39 (July 27, 2010) (to be codified at 37 C.F.R. pt. 201), <https://www.govinfo.gov/content/pkg/FR-2010-07-27/pdf/2010-18339.pdf> [https://perma.cc/P68M-HUAX].

The Triennial Review Process Imposes Significant Costs on the Public



Although intended as a backstop to ensure that the public interest remains protected, the triennial review of proposed exemptions to 1201(a)(1) instead imposes significant costs on the public.²¹ Every three years, organizations and individuals must petition the Copyright Office to propose new exemptions to reflect the evolving state of technology and society. And, because all previously granted exemptions expire at the end of their three-year cycle, petitioners also have to request renewals or alterations for prior exemptions. These petitions are sometimes challenged by parties opposed to the exemptions, and they must be reviewed by Copyright Office staff.

Although Congress established a framework for the review process, there does not appear to be any record of it seriously considering the costs involved in its operation.²² Instead, it appears to have simply assumed that the petitions for exemptions in the public interest would materialize before the Copyright Office every three years.

In practice, the work of drafting, supporting, and arguing for these petitions largely falls to

21 This report focuses on the costs of the triennial process itself. It does not attempt to quantify the larger impact of 1201(a)(1)'s prohibitions on legitimate activity, or of 1201(a)(2)'s anti-trafficking provisions on activities deemed to be noninfringing during the process.

22 The Budget Office Estimate included in the Committee Report considers various governmental and private costs of the bill, but does not mention the costs of requesting the exemptions. House Report at 32-34. The bill's Committee Report also fails to consider the burdens of participating in the process.

uncompensated nonprofit organizations, academics, and law school clinics. Collectively, they represent thousands of hours spent advocating for the public's ability to do what is already allowed under copyright law. This combined effort may be 1201(a)(1)'s most significant impact—an impact that is felt not by the copyright holder, who is already well protected by copyright law without it, but instead by public interest organizations that must find the capacity and time to participate in an extra bureaucratic procedure.

Proceeding Participants

Every three years, the review process requires the mobilization of dozens of organizations and individuals for a multi-month adjudication process.²³ The most recent proceeding involved 96 parties engaged with 22 renewal petitions and nine new exemption requests.²⁴ Each of these petitions and requests involves hours of research, drafting, and coordination with similarly-situated individuals and groups.

This collective effort is required in part because the Copyright Office, although it recognizes its own authority to engage in independent fact-finding, does not exercise that authority²⁶ or see itself as a

In practice, the work of drafting, supporting, and arguing for these petitions largely falls to uncompensated nonprofit organizations, academics, and law school clinics. Collectively, they represent thousands of hours spent advocating for the public's ability to do what is already allowed under copyright law.

23 Although this review focuses primarily on the public participants in the review process, the review also requires staff at the Copyright Office and Library of Congress to manage the process, review the petitions, and draft the final exemptions. These documents run in the hundreds of pages.

24 The Copyright Office revised its rules governing renewal petitions as part of the 2018 triennial process, creating a presumption in favor of petitions to renew. See US Copyright Office, *Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies*, 82 Fed. Reg. 29804, at 29805 (June 30, 2017) (to be codified at 37 C.F.R. pt. 201), <https://www.govinfo.gov/content/pkg/FR-2017-06-30/pdf/2017-13815.pdf> [<https://perma.cc/FS3K-G6NK>]. As a result of that change, many opponents have abandoned the process.

25 Although the Copyright Office numbered the exemption requests 1-7, it also broke out exemption 3 and 6 into (a) and (b) subparts, for a total of nine exemption categories. These subparts attracted independent engagement.

26 “Although the Office has discretion to engage in independent fact-finding and take administrative notice of evidence, the primary way that most evidence supporting an exemption will get into the record will continue to be through the submissions of proponents, who are usually in the best position to provide it.” See US Copyright Office, *Section 1201 of Title 17: A Report of the Register of Copyrights*, at 110 (June 2017) (“1201 Report”), <https://www.copyright.gov/policy/1201/section-1201-full-report.pdf> [<https://perma.cc/4MBL-SUMQ>].

representative of the public interest in this proceeding. Instead, it positions itself as balancing the interests of the broader public against the interests of a smaller group of rights holders.²⁷ The structure of the proceeding assumes that the public interest will be represented by uncompensated third parties, not the government itself.²⁸ It also means that, unless these uncompensated third parties find a way to act, no one represents the public interest at all.

PARTICIPANTS MUST HAVE RESOURCES FOR SUSTAINED ENGAGEMENT

The structure of the proceeding—spread out across multiple phases over more than a year—requires sustained, specialized engagement from anyone requesting an exemption. Simply raising an issue in the hopes that the Copyright Office itself will use its authority to explore it further is not enough.

The structure of the proceeding assumes that the public interest will be represented by uncompensated third parties, not the government itself. It also means that, unless these uncompensated third parties find a way to act, no one represents the public interest at all.

For example, in 2021, FloSports, Inc. petitioned the Copyright Office for an exemption related to recording livestreamed sporting events.²⁹ As per the Copyright Office’s instructions, the petition provided information about the proposed exemption, the copyrighted works sought to be accessed, technological prevention measures (DRM) preventing such access, the noninfringing uses involved, and the adverse effects that the absence of the circumvention imposed.³⁰

Although FloSports provided this information during the petition round of the proceeding, it did not

participate in the more formal comment round that followed months later. The Free Software Foundation did engage with the petition in the comment round, submitting a comment in support of FloSports’ petition that was co-signed by 111 named individuals living in the United States and an additional 119 named individuals living abroad.³¹

²⁷ See *id.* at 111-112.

²⁸ The Copyright Office discusses its own history and approach to the 1201(a)(1) process in the 1201 Report.

²⁹ FloSports, Inc., *Petition for New Exemption Under 17 U.S.C. § 1201*, 8th Triennial Rulemaking, Docket No. 2020-11 (Sep. 8, 2020), <https://www.copyright.gov/1201/2021/petitions/proposed/New%20Pet.%20-%20FloSports.pdf> [https://perma.cc/4BHR-8U3P].

³⁰ *Id.*

³¹ Free Software Found., *Comment Regarding a Proposed Exemption Under 17 U.S.C. 1201*, Docket

Nonetheless, the Copyright Office determined the description of the class to be “insufficiently clear” and declined to recommend its adoption.³² Notably, the Copyright Office did not take any steps on its own to further explore the context surrounding the exemption request. FloSports’ inability to commit to fully participating in every step of the process proved fatal for its request.

PARTICIPANTS ENGAGE REPEATEDLY OVER DECADES

While this report focuses on the efforts involved with the 2024 proceeding, many of this round’s renewal petitions reflect efforts by the organizations involved that go back decades. Although most of the renewal requests have not been challenged in this cycle, almost all of them were subject to opposition when they were introduced and for a number of cycles thereafter. Proponents of these exemption requests had to engage with the process over multiple triennial cycles before managing to avoid being challenged (again) in 2024.

As one typical example, the 2024 proceeding includes a request to renew the exemption for motion picture excerpts for use in documentary or other films where use is “in parody or for a biographical or historically significant nature.” (This single exemption renewal required work and time from two nonprofit organizations and two law school clinics: the International Documentary Association and Kartemquin Educational Films (represented by the UCI Intellectual Property, Arts, and Technology Clinic and private counsel),³³ as well as New Media Rights.).³⁴

No one opposed this exemption request during the current proceeding. However, the exemption request draws on decades of previous work, with many participants repeating their engagement during each cycle.

In the first three cycles, there were a number of requests related to accessing motion pictures on DVD:

-
- No. 2020-11 (Dec. 14, 2020), https://www.copyright.gov/1201/2021/comments/Class%2004InitialComments_Free%20Software%20Foundation.pdf [https://perma.cc/NS4H-74SY].
- 32 *Section 1201 Rulemaking: Eighth Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention, Recommendation of the Register of Copyrights*, at 81–2 (Oct. 2021), https://cdn.loc.gov/copyright/1201/2021/2021_Section_1201_Registers_Recommendation.pdf [https://perma.cc/F5JW-ZANS].
- 33 Int’l Documentary Ass’n & Kartemquin Educ. Films, *Petition to Renew a Current Exemption Under 17 U.S.C. § 1201*, 9th Triennial Rulemaking, Docket No. 2023-5 (July 6, 2023), <https://www.copyright.gov/1201/2024/petitions/renewal/Renewal%20Pet.%20-%20Documentary%20Films%20-%20Joint%20Filmmakers.pdf> [https://perma.cc/4P6U-P8AW].
- 34 New Media Rights, *Petition to Renew a Current Exemption Under 17 U.S.C. § 1201*, 9th Triennial Rulemaking, Docket No. 2023-5 (July 6, 2023), <https://www.copyright.gov/1201/2024/petitions/renewal/Renewal-Pet-Documentary-Films-New-Media-Rights-1.pdf>, [https://perma.cc/YK4Y-DCB2].

- 2000 cycle (an exemption request to access audiovisual works on DVD, not recommended by the Register of Copyrights).³⁵
- 2003 cycle (five different exemption requests related to accessing motion pictures on DVD, not recommended by the Register).³⁶
- 2006 cycle (one exemption for audiovisual works included in the library of an educational institution when circumvention is accomplished for the purpose of making compilations for educational use in the classroom recommended by the Register, two other exemptions related to audiovisual works on DVD that were not recommended by the Register).

The fourth cycle was the first one to include a specific exemption request related to accessing motion pictures on DVD in order to incorporate them into new works. It effectively set the terms for each subsequent cycle, engaging a large collection of participants each time:

- 2010 cycle (for the first time, a specific exemption request to access motion pictures on DVD for the purpose of incorporation of short clips into new works for specified purposes), requested by Kartemquin Educational Films and the International Documentary Association—represented by the U.S.C. Intellectual Property and Technology Law Clinic and private counsel³⁷—and opposed by the Advanced Access Content System Licensing Administrator,³⁸ DVD Copy Control Association, Inc. (“DVD CCA”),³⁹ the

35 See US Copyright Office, *Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies*, 65 Fed. Reg. 64556, at 64567—70 (Oct. 27, 2000) (to be codified at 37 C.F.R. pt. 201), <https://www.govinfo.gov/content/pkg/FR-2000-10-27/pdf/00-27714.pdf> [https://perma.cc/XRH5-8N9K].

36 US Copyright Office, *Recommendation of the Register of Copyrights in RM 2002-4; Rulemaking on Exemptions from Prohibition on Circumvention of Copyright Protection Systems* (Oct. 27, 2003), <https://cdn.loc.gov/copyright/1201/docs/register-recommendation.pdf> [https://perma.cc/FPX8-K7BT].

37 Kartemquin Educ. Films, Inc. & The Int’l Documentary Ass’n, *Comment on Exemption to Prohibition on Circumvention of Copyright Protection Systems For Access Control Technologies*, Docket No. RM 2008-08 (Dec 2, 2008), <https://cdn.loc.gov/copyright/1201/2008/comments/kartemquin-ida.pdf> [https://perma.cc/KKY3-SA4A].

38 Advanced Access Content Sys. Licensing Adm’r, *Reply Comments on Exemption to Prohibition on Circumvention of Copyright Protection for Access Control Technologies*, Docket No. RM 2008-08 (Feb. 2, 2009), <https://cdn.loc.gov/copyright/1201/2008/responses/advanced-access-content-system-36.pdf> [https://perma.cc/KZ49-C4VA].

39 DVD Copy Control Ass’n, Inc. (“DVD CCA”), *Reply Comments to Exemption to Prohibition on Circumvention of Copyright Protection for Access Control Technologies*, Docket No. RM 2008-08 (Feb. 2, 2009), <https://cdn.loc.gov/copyright/1201/2008/responses/dvd-cca-inc-38.pdf> [https://

Motion Picture Association of America,⁴⁰ and a combined opposition of the Association of American Publishers, American Society of Media Photographers, Alliance of Visual Artists, Business Software Alliance, Directors Guild of America, Entertainment Software Association, Motion Picture Association of America, Picture Archive Council of America, and Recording Industry Association of America,⁴¹ Time Warner, Inc.,⁴² further supported by David P. Hayes⁴³ and VAMP Productions,⁴⁴ recommended by the Register.

- 2012 cycle (a specific exemption request to access motion pictures on DVDs and Blu-Ray for the purpose of incorporating short clips into new works for specified purposes, requested by the International Documentary Association, Kartemquin Educational Films, National Alliance for Media Arts and Culture, and Independent Filmmaker Project—represented by the U.S.C. Intellectual Property and Technology Law Clinic and private counsel⁴⁵—opposed by the Advanced Access Content System Licensing Administrator,⁴⁶

perma.cc/625T-QH9V].

40 Motion Picture Ass’n of Am., *Comments on Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies*, Docket No. RM 2008-08 (Feb. 2, 2009), <https://cdn.loc.gov/copyright/1201/2008/responses/mpaa-46.pdf> [https://perma.cc/P5SG-JUH5].

41 AAP: Ass’n Of Am. Publishers et al., *Joint Comments on Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies*, Docket No. RM 2008-08 (Feb. 2, 2009), <https://cdn.loc.gov/copyright/1201/2008/responses/association-american-publishers-47.pdf> [https://perma.cc/U8VT-SMT8].

42 Time Warner Inc., *Comments on Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies*, Docket No. RM 2008-08 (Feb. 2, 2009), <https://cdn.loc.gov/copyright/1201/2008/responses/time-warner-49.pdf> [https://perma.cc/S4LU-H2FS].

43 David P. Hayes, *Comments in support of Kartemquin Educational Films, Inc. and the International Documentary Association*, Docket No. RM 2008-08 (Feb. 2, 2009) <https://cdn.loc.gov/copyright/1201/2008/responses/david-hayes-58.pdf> [https://perma.cc/DQ85-DEMK].

44 VAMP Prod., *Comment on Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies*, Docket No. RM 2008-08 (Feb. 2, 2009), <https://cdn.loc.gov/copyright/1201/2008/responses/vamp-productions-01.pdf> [https://perma.cc/WM8X-PTDU].

45 *Section 1201 Rulemaking: Fifth Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention, Recommendation of the Register of Copyrights* (Oct. 2012), https://cdn.loc.gov/copyright/1201/2012/Section_1201_Rulemaking_2012_Recommendation.pdf [https://perma.cc/9BF2-QZM9].

46 Advanced Access Content Sys. Licensing Adm’r LLC, *Comment on Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies*, Docket No. RM 2011-7 (Feb. 24, 2012), https://cdn.loc.gov/copyright/1201/2012/comments/Bruce_H._Turnbull.pdf [https://perma.cc/WV52-KWD9].

DVD CCA,⁴⁷ a combined opposition of the Association of American Publishers, American Society of Media Photographers, Business Software Alliance, Entertainment Software Association, Motion Picture Association of America, Picture Archive Council of America, and Recording Industry Association of America,⁴⁸ and supported by a combination of Film Independent, Chicago Filmmakers, Kindling Group, Kirby Dick, Jeffrey Kusama-Hinte, J S Mayank, David Novack, and Laurence Thrush,⁴⁹ the University Film & Video Association,⁵⁰ Ann Breuer,⁵¹ Elizabeth Coffman,⁵² a combination of Peter Decherney, Katherine Sender, Michael X. Delli Carpini, International Communications Association, Society for Cinema and Media Studies, and American Association of University Professors,⁵³ and Philadelphia Independent Film and Video Association,⁵⁴ recommended by the Register).

- 2015 cycle (a specific exemption request to access motion pictures on DVDs, Blu-Ray, and digitally transmitted video for the purpose of incorporating short clips into new works for specified purposes), requested by the International Documentary Association, Kartemquin Educational Films, and National Alliance for Media Arts and Culture (represented by the UCI Intellectual Property, Arts, and Technology Clinic and private counsel),⁵⁵ opposed

-
- 47 DVD CCA, *Comments on Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies*, Docket No. RM 2011-7 (Feb. 24, 2012), <https://cdn.loc.gov/copyright/1201/2012/comments/DVDCCA.pdf> [https://perma.cc/LG57-NSAB].
- 48 AAP: Ass'n Of Am. Publishers et al., *Joint Comments on Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies*, Docket No. RM 2011-7 (Feb. 10, 2012), https://cdn.loc.gov/copyright/1201/2012/comments/Steven_J._Metalitz.pdf [https://perma.cc/GM6K-G7SF].
- 49 Film Indep. et al., Docket No. RM 2011-7 (Feb. 24, 2012), *Comment in Response to Proposed Class 7D*, https://cdn.loc.gov/copyright/1201/2012/comments/laurence_thrush.pdf [https://perma.cc/R6LZ-V92H].
- 50 Univ. Film & Video Ass'n, *Comments on Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies*, Docket No. RM 2011-7 (Feb 9, 2012), https://cdn.loc.gov/copyright/1201/2012/comments/Robert_Sabal.pdf [https://perma.cc/SDJ5-7EJ6].
- 51 Ann Breuer, *Comments on Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies*, Docket No. RM 2011-7 (Feb. 10, 2012), https://cdn.loc.gov/copyright/1201/2012/comments/Ann_Breuer.pdf [https://perma.cc/XV3B-5Q2J].
- 52 Elizabeth Coffman, *Comments on Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies*, Docket No. RM 2011-7 (Feb. 5, 2012), https://cdn.loc.gov/copyright/1201/2012/comments/Elizabeth_Coffman.pdf [https://perma.cc/2B54-8ASU].
- 53 Peter Decherney et al., *Reply Comment on Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies*, Docket No. RM 2011-7 (Mar. 2, 2012), https://cdn.loc.gov/copyright/1201/2012/comments/reply/peter_decherney.pdf [https://perma.cc/8PXY-C5DC].
- 54 Int'l Documentary Ass'n, *Reply Comment on Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies*, Docket No. 2014-07 (May 1, 2015), https://cdn.loc.gov/copyright/1201/2015/reply-comments-050115/class%206/ReplyComments_LongForm_IDAEtAl_Class06.pdf [https://perma.cc/N7Y6-AG2M].
- 55 Int'l Documentary Ass'n et al., *Petition for Exemption to Exemption to Prohibition on Circumvention*

by Advanced Access Content System Licensing Administrator,⁵⁶ DVD CCA,⁵⁷ and a combination of the Entertainment Software Association, Motion Picture Association of America, and Recording Industry Association of America,⁵⁸ and supported by New Media Rights, 1,565 individual comments received through the Digital Right to Repair website, the Free Software Foundation, a combination of Film Independent, Indie Caucus, University Film and Video Association, Center for Independent Documentary, Women in Film in Video, and Women in Film,⁵⁹ recommended by the Register.

- 2018 cycle (a petition to renew the previously granted exemption, requested by the Film Independent, International Documentary Association, Kartemquin Educational Films, Center for Independent Documentary, and Women in Film and Video—represented by the UCI Intellectual Property, Arts, and Technology Clinic and private counsel⁶⁰—as well as New Media Rights,⁶¹ opposed by Advanced Access Content System Licensing

of Copyright Protection Systems for Access Control Technologies, Docket No. 2014-07 (Nov. 3, 2014), https://cdn.loc.gov/copyright/1201/2014/petitions/International_Documentary_Association_et_al_1201_Initial_Submission_2014.pdf [https://perma.cc/MZX9-UNJA].

- 56 Advanced Access Content Sys. Licensing Adm'r LLC ("AACSLA"), *Comments on Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies under 17 U.S.C. § 1201*, Docket No. 2014-07 (Mar. 27, 2015), https://cdn.loc.gov/copyright/1201/2015/comments-032715/class%207/AACSLA_class07_1201_2014.pdf [https://perma.cc/MVQ2-U7HT].
- 57 DVD CCA, *Comments on Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies under 17 U.S.C. § 1201*, Docket No. 2014-07 (Mar. 27, 2015), https://cdn.loc.gov/copyright/1201/2015/comments-032715/class%207/DVDCCA_class07_1201_2014.pdf [https://perma.cc/HZ2Y-L2NL].
- 58 Ent. Software Ass'n et al., *Long Comment Regarding a Proposed Exemption Under 17 U.S.C. 1201*, Docket No. 2014-07, (Mar. 27, 2015), https://cdn.loc.gov/copyright/1201/2015/comments-032715/class%206/Joint_Creators_and_Copyright_Owners_class06_1201_2014.pdf [https://perma.cc/X95E-RTMA].
- 59 Int'l Documentary Ass'n et al., *Comment on Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies*, Docket No. 2014-07 (Feb. 6, 2015), https://cdn.loc.gov/copyright/1201/2015/comments-020615/InitialComments_LongForm_IDA_Class06.pdf [https://perma.cc/M9M5-D6SJ].
- 60 Film Indep. et al., *Petition to Renew a Current Exemption Under 17 U.S.C. § 1201*, Docket No. 2017-10 (July 13, 2017), <https://cdn.loc.gov/copyright/1201/2018/petitions-073117/Renewal%20Pet.%20-%20Documentary%20Films%20-%20Intl%20Documentary%20Assn%20et%20al.pdf> [https://perma.cc/RJ6R-6QQQ].
- 61 New Media Rights, *Petition to Renew a Current Exemption Under 17 U.S.C. § 1201*, Docket No. 2017-10 (July 13, 2017), <https://cdn.loc.gov/copyright/1201/2018/petitions-073117/Renewal%20Pet.%20-%20Documentary%20Films%20-%20New%20Media%20Rights.pdf> [https://perma.cc/3DEK-TZ2J].

Administrator,⁶² DVD CCA,⁶³ and a combination of the Motion Picture Association of America, Entertainment Software Association, Recording Industry Association of America, and the Association of American Publishers,⁶⁴ and supported by a combination of Authors Alliance, The American Association of University Professors, Organization for Transformative Works, Interactive Fiction Technology Foundation, and Bobette Buster—represented by the UCI Intellectual Property, Arts, and Technology Clinic and Samuelson-Glushko Technology Law & Policy Clinic⁶⁵—a combination of Brigham Young University and Brigham Young University-Idaho,⁶⁶ Electronic Frontier Foundation,⁶⁷ Free Software Foundation,⁶⁸ a combination of Peter Decherney, Michael X. Delli Carpini, Katherine Sender, the Department of Communications at the University of Michigan, the International Communication Association, and the Society for Cinema and Media Studies,⁶⁹ a combination of the Independent Filmmaker Project, University Film and Video Association, and The Alliance for Media Arts + Culture—represented by the UCI Intellectual Property, Arts, and Technology Clinic and private counsel—⁷⁰ National

-
- 62 Advanced Access Content Sys. Licensing Adm'r, LLC, *Long Comment Regarding a Proposed Exemption Under 17 U.S.C. § 1201*, Docket No. 2017-10 (Feb. 12, 2018), https://cdn.loc.gov/copyright/1201/2018/comments-021218/class1/Class_01_Opp'n_AACS_LA.pdf, [https://perma.cc/N8QE-Z9SQ].
- 63 DVD CCA, *Long Comment Regarding a Proposed Exemption Under 17 U.S.C. § 1201*, Docket No. 2017-10 (Feb. 12, 2018), https://cdn.loc.gov/copyright/1201/2018/comments-021218/class1/Class_01_Opp'n_DVD_CCA_&_AACS_LA.pdf [https://perma.cc/A8JF-57A7].
- 64 Motion Picture Ass'n of Am., Inc. et al., *Long Comment Regarding a Proposed Exemption Under 17 U.S.C. § 1201*, Docket No. 2017-10 (Feb. 12, 2018), https://cdn.loc.gov/copyright/1201/2018/comments-021218/class1/Class_01_Opp'n_Joint_Creators_II.pdf [https://perma.cc/YG2C-M9ZE].
- 65 Authors All. et al., *Long Comment Regarding a Proposed Exemption Under 17 U.S.C. § 1201*, Docket No. 2017-10 (Dec. 18, 2017), <https://cdn.loc.gov/copyright/1201/2018/comments-121817/class1/class-01-initialcomments-authors-alliance-et-al.pdf> [https://perma.cc/6SDF-V8TY].
- 66 BYU & BYU Idaho, *Long Comment Regarding a Proposed Exemption Under 17 U.S.C. § 1201*, Docket No. 2017-10 (Dec. 18, 2017), <https://cdn.loc.gov/copyright/1201/2018/comments-121817/class1/class-01-initial-comments-byu.pdf> [https://perma.cc/J3PS-FAWJ].
- 67 Elec. Frontier Found. et al., *Long Comment Regarding a Proposed Exemption Under 17 U.S.C. § 1201*, Docket No. 2017-10 (Dec. 18, 2017), <https://cdn.loc.gov/copyright/1201/2018/comments-121817/class1/class-01-initialcomments-eff.pdf> [https://perma.cc/6ZWM-VEBK].
- 68 Free Software Found., *Comment Regarding a Proposed Exemption Under 17 U.S.C. 1201*, Docket No. 2017-10, (Dec. 18, 2017), <https://cdn.loc.gov/copyright/1201/2018/comments-121817/class1/class-01-initialcomments-fsf.pdf> [https://perma.cc/35HK-Q4UJ].
- 69 Peter Decherney et al., *Long Comment Regarding a Proposed Exemption Under 17 U.S.C. § 1201*, Docket No. 2017-10 (Dec. 18, 2017), <https://cdn.loc.gov/copyright/1201/2018/comments-121817/class1/class-01-initialcomments-joint-educators.pdf> [https://perma.cc/R77E-F63U].
- 70 Film Indep. et al., *Long Comment Regarding a Proposed Exemption Under 17 U.S.C. § 1201*,

Association of Criminal Defense Lawyers,⁷¹ a combination of Steve F. Anderson and Patricia Aufderheide,⁷² and Public Knowledge⁷³—recommended by Register.

- 2021 cycle (a petition to renew the previously granted exemption, requested by Film Independent, International Documentary Association, and Kartemquin Educational Films—represented by the UCI Intellectual Property, Arts, and Technology Clinic and private counsel⁷⁴—as well as New Media Rights,⁷⁵ opposed by a combination of DVD CCA and Advanced Access Content System Licensing Administrator,⁷⁶ and a combination of the Motion Picture Association, Alliance for Recorded Music, and Entertainment Software Association,⁷⁷ and supported by a combination of Brigham Young University and Brigham Young University-Idaho,⁷⁸ Free Software Foundation,⁷⁹ Organization for Transformative Works,⁸⁰ a combination of Peter Decherney, Katherine Sender, John L. Jackson, Rebecca Stein, International Communication

Docket No. 2017-10 (Dec. 18, 2017), <https://cdn.loc.gov/copyright/1201/2018/comments-121817/class1/class-01-initialcomments-joint-filmmakers.pdf> [https://perma.cc/B57H-XH5M].

- 71 Nat'l Ass'n of Crim. Def. Law., *Short Comment Regarding a Proposed Exemption Under 17 U.S.C. 1201 Item 1*, Docket No. 2017-10 (Dec. 14, 2017), <https://cdn.loc.gov/copyright/1201/2018/comments-121817/class1/class-01-initialcomments-nacdl.pdf> [https://perma.cc/2LCN-FFYT].
- 72 Peter Decherney et al., *Long Comment Regarding a Proposed Exemption Under 17 U.S.C. § 1201*, Docket No. 2017-10 (Mar. 14, 2018), https://cdn.loc.gov/copyright/1201/2018/comments-031418/class1/Class_01_Reply_Joint_Educators.pdf [https://perma.cc/3JZL-9K99].
- 73 Public Knowledge, *Long Comment Regarding a Proposed Exemption Under 17 U.S.C. § 1201*, Docket No. 2017-10 (Mar. 14, 2018), https://cdn.loc.gov/copyright/1201/2018/comments-031418/class1/Class_01_Reply_PK.pdf [https://perma.cc/QZ2L-TYC4].
- 74 Int'l Documentary Ass'n et al., *Petition to Renew a Current Exemption Under 17 U.S.C. § 1201, 8th Triennial Rulemaking*, Docket No. 2020-11 (July 22, 2020), <https://www.copyright.gov/1201/2021/petitions/renewal/Renewal%20Pet.%20-%20Documentary%20Films%20-%20Joint%20Filmmakers.pdf> [https://perma.cc/7WPV-APLG].
- 75 New Media Rights, *Petition to Renew a Current Exemption Under 17 U.S.C. § 1201, 8th Triennial Rulemaking*, Docket No. 2020-11 (July 22, 2020), <https://www.copyright.gov/1201/2021/petitions/renewal/Renewal%20Pet.%20-%20Documentary%20Films%20-%20New%20Media%20Rights.pdf> [https://perma.cc/Y84G-HVFJ].
- 76 DVD CCA & Advanced Access Content Sys. Licensing Adm'r, LLC, *Long Comment Regarding a Proposed Exemption Under 17 U.S.C. § 1201*, Docket No. 2020-11 (Feb 9, 2021), https://www.copyright.gov/1201/2021/comments/opposition/Class_1_Opp'n_DVD%20CCA%20and%20AACS%20LA.pdf [https://perma.cc/8WK3-N3VL].
- 77 Motion Picture Ass'n, Inc. et al., *Long Comment Regarding a Proposed Exemption Under 17 U.S.C. § 1201*, Docket No. 2020-11 (Feb 9, 2021), https://www.copyright.gov/1201/2021/comments/opposition/Class_1_Opp'n_Joint%20Creators%20and%20Copyright%20Owners.pdf [https://perma.cc/2UBS-LMCA].
- 78 BYU & BYU Idaho, *Long Comment Regarding a Proposed Exemption Under 17 U.S.C. § 1201*, Docket No. 2020-11 (Dec. 14, 2020), https://www.copyright.gov/1201/2021/comments/Class%2001_InitialComments_Brigham%20Young%20University.pdf [https://perma.cc/7L8E-FA2C].
- 79 Free Software Found., Inc., *Comment Regarding a Proposed Exemption Under 17 U.S.C. 1201*, Docket No. 2020-11 (Dec. 14, 2020), https://www.copyright.gov/1201/2021/comments/Class%2001_InitialComments_Free%20Software%20Foundation.pdf [https://perma.cc/LK3H-2UQ2].
- 80 Org. for Transformative Works, *Long Comment Regarding a Proposed Exemption Under 17 U.S.C. § 1201*, Docket No. 2020-11 (Dec. 14, 2020), https://www.copyright.gov/1201/2021/comments/Class%2001_InitialComments_Organization%20for%20Transformative%20Works.pdf [https://perma.cc/F5UT-M5YR].

Association, Society for Cinema and Media Studies, Console-ing Passions, Library Copyright Alliance, Shiv Gaglani, Stefan Wisbauer, Anderw Berg, Saud Siddiqui, Ken Robertson, and Ruthe Farmer,⁸¹ an anonymous commenter,⁸² Columbia University,⁸³ and Francesca Coppa,⁸⁴ commented on without taking a position on the exemption by Swank Motion Pictures,⁸⁵ recommended by Register).

This work done to lay the foundation of the 2024 renewal request (which, as a reminder, involves using film clips as part of documentaries or parodies) includes more than 1,200 pages of comments, submitted between 2010 and 2021, on behalf of over 70 companies, organizations, and individuals. This total does not include the 1,565 individual comments collected by the Digital Right to Repair website during the 2015 cycle, or the time spent preparing for and participating in live hearings for each cycle over the period of time. Copyright Office staff reviewed each of these submissions and discussed them at length in recommendation reports.

This entire corpus of work represents a debate over special rules governing activity that would be paradigmatic fair use in any other circumstance: using short clips of a work for criticism or commentary. It also represents one of dozens of requests in each cycle.

MOST PARTICIPANTS SUPPORT EXEMPTIONS

In the 2024 cycle, the vast majority of exemption participants supported exemptions. Those proponents tend to be nonprofit organizations or academics, often supported by law clinics, advocating on behalf of a wide range of exemptions for a diverse set of users.

-
- 81 Peter Decherney et al., *Long Comment Regarding a Proposed Exemption Under 17 U.S.C. § 1201*, Docket No. 2020-11 (Dec. 14, 2020), https://www.copyright.gov/1201/2021/comments/Class%2001_InitialComments_Joint%20Educators.pdf [https://perma.cc/S57W-BVBQ].
 - 82 Anonymous, *Reply Comment*, Docket No. 2020-11 (Mar. 10, 2021), https://www.copyright.gov/1201/2021/comments/reply/Class%201_Reply_Anonymous.pdf [https://perma.cc/7XWB-S8FX].
 - 83 Columbia University, *Reply Comment*, Docket No. 2020-11 (Mar. 10, 2021), https://www.copyright.gov/1201/2021/comments/reply/Class%201_Reply_Columbia%20University.pdf [https://perma.cc/YD2B-839Y].
 - 84 Francesca Coppa, *DMCA Statement 2021 on behalf of Proposed Class 1: Audiovisual Works - Criticism and Comment (Education and Noncommercial Videos)*, Docket No. 202-11 (Feb. 25, 2021), https://www.copyright.gov/1201/2021/comments/reply/Class%201_Reply_Francesca%20Coppa.pdf [https://perma.cc/3H58-6PB2].
 - 85 Swank Motion Pictures, Inc., *Reply Comment on Eighth Triennial 1201 Rulemaking*, Docket No. 202-11 (Feb. 19, 2021), https://www.copyright.gov/1201/2021/comments/reply/Class%201_Reply_Swank%20Motion%20Pictures.pdf [https://perma.cc/RGF3-8KPY].

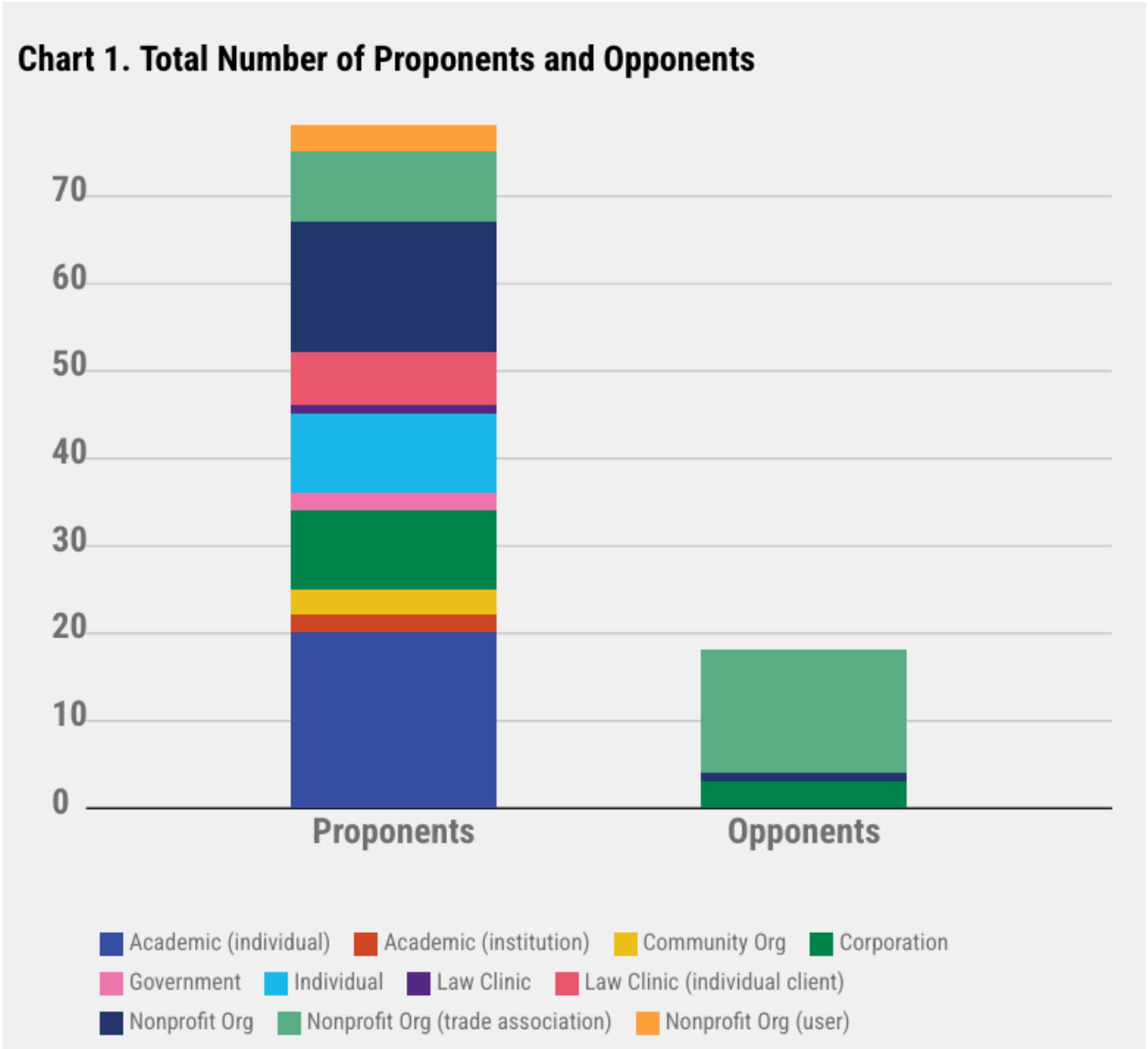


Chart 1: Stacked bar chart with proponents and opponents broken out by organization type⁸⁶

⁸⁶ For a full list of categories and category definitions, see Appendix A.

MOST PARTICIPANTS HAVE NO DIRECT FINANCIAL INTEREST IN THE OUTCOME

These nonprofit and academic groups share one important characteristic: They do not stand to receive a direct financial benefit from the exemptions they support (and, indeed, engaging in the exemption process costs them both time and resources). Instead, in most cases, such groups represent a broader public interest.⁸⁷ This ad hoc collection of participants organizes itself to petition for exemptions. The Copyright Office notice that kicks off the triennial review simply states that it will receive and review exemption requests “from the public” and “interested parties,” assuming that such parties will have the means to engage in the entirety of the exemption process.

Chart 1 thus makes a distinction between nonprofit trade associations and other nonprofits. Nonprofit trade associations often participate in the proceeding on behalf of members that have direct financial interest in the outcome. While trade associations do not themselves directly benefit from the exemptions requested, they represent commercially interested members who would. That separates them from nonprofit organizations working in the public interest more broadly.

Chart 2 illustrates the trade association/nonprofit distinction more clearly, revealing that a significant majority of the participants (both exemption proponents and opponents) do not have a direct or indirect financial benefit in the outcome.

87 A subset of nonprofit proponents supported exemptions because the organization itself anticipated making use of the exemption. For example, Rhizome supported an exemption for video game preservation because it is directly engaged with video game preservation. Transcript of Proceedings in the matter of Section 1201 Public Hearing: Proposed Class 6 (b) Video Games - Preservation and Proposed Class 6(a) Computer Programs - Preservation at 24 (Apr. 18, 2024), <https://www.copyright.gov/1201/2024/hearing-transcripts/240418-Section-1201-Public-Hearing-Class6a-6b.pdf> [https://perma.cc/96HZ-AG8U].

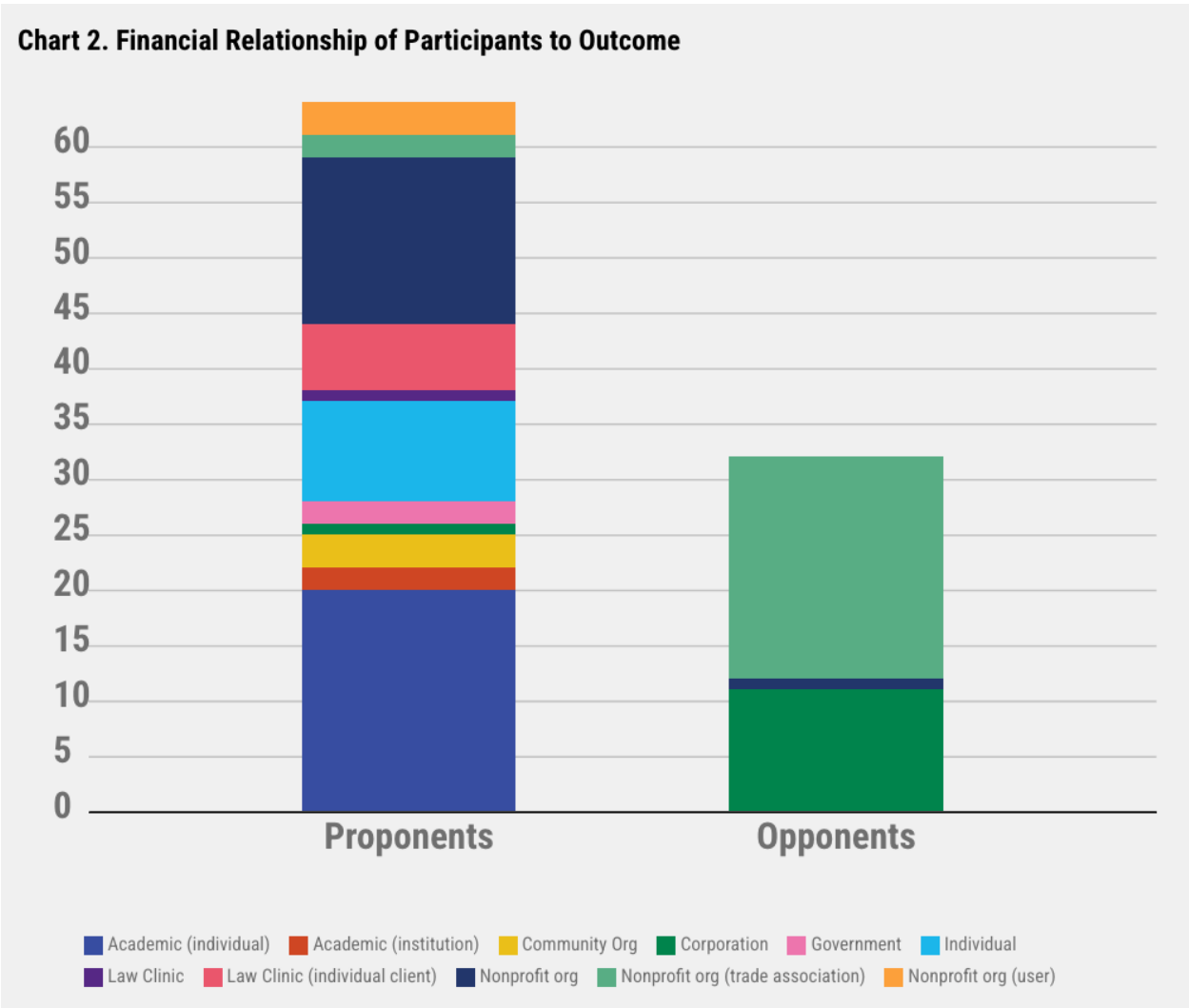


Chart 2: Stacked bar chart representing the financial relationship between participants in process and process outcomes

Participants without any kind of financial stake in the outcome, such as public interest organizations, academics, or individuals, generally engage in the exemption process in order to advocate on behalf of a larger set of principles. Such principles—including the notion that people with visual impairments should be able to use text-to-speech technologies to read their ebooks, or that film studies professors should be able to prepare movie clips to show in class—lead to no direct monetary gain. As a result, any exemptions the Copyright Office grants will not directly pay for the effort involved in securing it. Nonetheless, the triennial process imposes a specific cost on these participants in order to create a diffused benefit for the public.

Participants without a direct financial interest in the outcome act as both proponents and opponents of exemptions, although they tend to skew toward being proponents. Trade associations form the majority of the exemption opponents, largely representing commercial members that will be directly impacted by the exemption. Only two participants without a direct financial benefit in the outcome opposed exemptions.⁸⁸

Chart 3. Direct Financial Benefit in Outcome as Distributed Between Proponents and Opponents

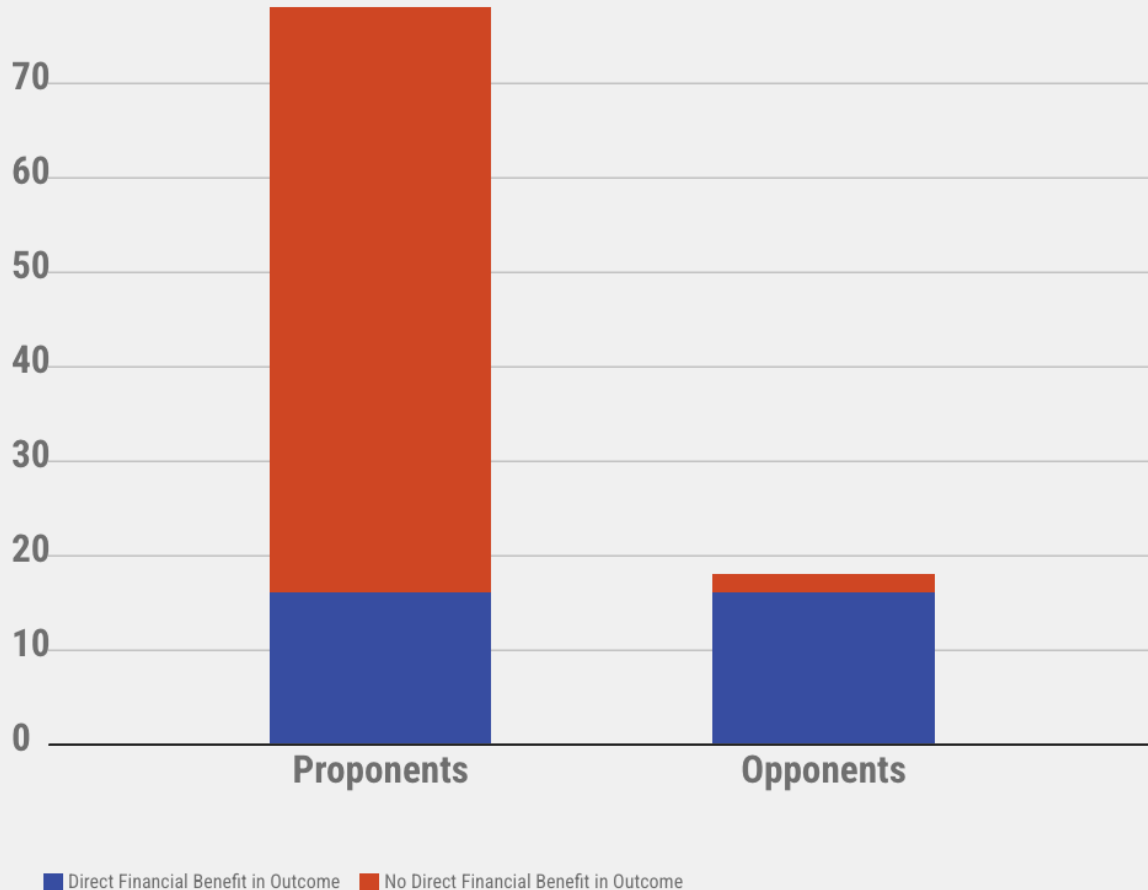


Chart 3: Orgs by direct financial interest vs other interest

⁸⁸ One was Author Services, Inc., a literary agency that represents the interests of L. Ron Hubbard, expressing concern about how one proposed exemption would impact devices intended for use by individuals with particular qualifications or special training (L. Ron Hubbard is the founder of the Church of Scientology, which uses “E-meter” devices during its auditing practices). Author Services, Inc., *Comment on Exemptions to Permit Circumvention of Access Controls On Copyrighted Works*, Docket No. 2023-5 (Aug. 10, 2023), <https://www.copyright.gov/1201/2024/petitions/renewal/Opp-Device-Repair-Author-Services-Inc.pdf> [https://perma.cc/U8ZB-UUGD]. The other was the American Consumer Institute, expressing concern that one proposed exemption would conflict with its own Safe Repair Project for repair of medical devices. Am. Consumer Inst., *Comment*, Docket No. 2023-5 (Aug. 14, 2023), <https://www.copyright.gov/1201/2024/petitions/renewal/Opp-Medical-Devices-ACI.pdf> [https://perma.cc/E4WX-K5Y2].

In some cases, the organizations and individuals advocating for exemptions have the internal capacity to do so themselves. However, many of the exemption advocates rely on pro bono representation by law clinics to represent their interests in the proceeding. This structure creates a double burden for advocates of the public interest—once for the organization itself, and a second time for the law clinic providing it with free representation.⁸⁹

Law School Clinics Involved in the 2024 Proceeding
Cyberlaw Clinic at Harvard Law School
Glushko-Samuelson Intellectual Property Law Clinic, American University Washington College of Law
Intellectual Property and Technology Clinic, USC Gould School of Law
Juelsgaard IP and Innovation Clinic, Stanford Law
New Media Rights*
Samuelson Law, Technology & Public Policy Clinic, UC Berkeley School of Law
UCI Intellectual Property, Arts, and Technology Clinic
<i>* New Media Rights advocated for exemptions on behalf of its clients generally. Other law clinics advocated for exemptions on behalf of specific clients, which represented a larger public set of beneficiaries.</i>

Table 1: Clinics involved in the 2024 Proceeding

Significant Costs

All told, the effort organizations, companies, and individuals devote to the triennial 1201(a)(1) exemption process likely represents thousands of work hours every cycle.⁹⁰ (Many beneficiaries of this effort, such as patients monitoring data output from medical devices implanted in their bodies, will never know that this process occurred.) This estimate does not consider the time of the Copyright Office staff who must review the petitions they receive.

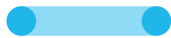
Clearly, Section 1201(a)(1) places a significant burden on the public—a burden it must bear simply to maintain its existing rights. And yet, even this accounting does not fully capture the burden 1201(a)(1) imposes on legitimate uses of copyright-protected work, because it cannot capture all of the legitimate uses that simply never happened because of 1201(a)(1)’s prohibitions.⁹¹

89 Although they did not do so as part of a clinic, law professors Andrea Matwyshyn and Rebecca Tushnet also represented exemption proponents.

90 The nature of the participants makes a precise number of hours impossible to quantify. Law school clinics and advocacy organizations do not strictly track hours worked on a specific matter. Law firms working on the matter (usually for opponents) do track hours for billing purposes but do not publicly disclose this information.

91 While this report is focused on the impacts of 17 U.S.C. § 1201(a)(1), 17 U.S.C. § 1201(a)(2)□□

1201(a)(1) is Rarely Used by Rights Holders



How does the burden imposed on the public by 1201(a)(1) compare to the benefits it provides? One way to measure the benefit is to look at how often copyright holders exercised the rights granted to them by 1201(a)(1) during the time that the previous exemptions were in effect.

The previous exemptions were adopted on October 26, 2018, and remained in place until they were superseded by new exemptions on October 28, 2024.⁹² During that period, plaintiffs filed a total of 34 lawsuits that included a 1201(a)(1) claim.⁹³ Of those, as explored below, only 12 (and arguably only eight) include 1201(a)(1) claims with a reasonable connection to the purpose of the provision. Each of these suits also included underlying copyright claims. That

prohibition on distributing circumvention tools, even to users who seek to circumvent DRM for legitimate and socially productive purpose, likely imposes an even larger burden on the public because it imposes barriers to non-technical users interested in using the exemptions.

92 See US Copyright Office, *Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies*, 89 Fed. Reg. 85437 (Oct 28, 2024) (to be codified at 37 C.F.R. pt. 201), <https://www.govinfo.gov/content/pkg/FR-2024-10-28/pdf/2024-24563.pdf> [https://perma.cc/F53N-Q5NB].

93 This section focuses on cases that were initiated during the relevant period. It does not include cases that were initiated prior to the relevant period, even if they were active during that period. The cases discussed were identified with searches in widely-used legal databases. While this approach is likely to identify most of the relevant cases, it is not guaranteed to capture all cases with 100% accuracy.

means that the plaintiffs had the ability to bring each of the suits even in the absence of 1201(a)(1). It is unclear how, if at all, the addition of the 1201(a)(1) claim impacted the outcome of the cases.

Lawsuits with Facts Matching the Original Intent of 1201(a)(1) Mostly Relate to Enterprise Software

The majority of cases with fact patterns that would likely be familiar to the drafters of 1201(a)(1) involve allegations of unauthorized use of high-end engineering software.^{94 95} Of the eight cases that fall into that category, six were brought by a single manufacturer of high-end engineering software against allegedly infringing users. In some sense, the entirety of the effort expended during the triennial review process is in service of Dassault Systèmes bringing an additional claim against companies that use its CAD software without a license.

An additional four cases involve allegations of unauthorized use of photographs. In each of these cases, plaintiffs allege facts that facially support claims of copyright infringement. However, each of them struggles to describe “a technological measure that effectively controls access” to the photographs in their complaints.

One case identifies the technical measure as unspecified features of Instagram and Twitter “that restrain users from downloading content uploaded by other users.”⁹⁶

In some sense, the entirety of the effort expended during the triennial review process is in service of Dassault Systèmes bringing an additional claim against companies that use its CAD software without a license.

94 For example, a license for electronic design automation involved in one of the cases costs \$240,000 per year. Compl. ¶ 44, *Cadence Design Sys., Inc. v. Fenda USA, Inc.*, No. 3:23-cv-05916-CRB (N.D. Cal. Nov. 15, 2023), <https://storage.courtlistener.com/recap/gov.uscourts.cand.420926/gov.uscourts.cand.420926.1.0.pdf> [https://perma.cc/7YNF-EEY5].

95 Such vendors have a wide range of legal and other tools available to punish unlicensed use. In one example noteworthy for its creativity, the *Ain Shams Engineering Journal* retracted two articles after the company behind the FLOW-3D software used in the analysis complained that the authors had used it without an appropriate license. *Complaint from engineering software company prompts two retractions*, Retraction Watch (Nov. 8, 2024) <https://retractionwatch.com/2024/11/08/complaint-from-engineering-software-company-prompts-two-retractions/> [https://perma.cc/F999-BAB5].

96 First Am. Compl. ¶ 127, *Wright v. Mail Media Inc.*, No. 1:23-cv-07124-ALC (S.D.N.Y. June 3, 2024), <https://storage.courtlistener.com/recap/gov.uscourts.nysd.604243/gov.uscourts.nysd.604243.51.0.pdf> [https://perma.cc/8XFL-GN2A].

The plaintiff bringing two others identifies disabling “the right-click copy feature on its images” as the measure.⁹⁷ The fourth, a pro se plaintiff, describes storing the disputed images “on a commercial ISP configured, managed, maintained, with technological security measures.”⁹⁸

The information available in filings related to these photograph cases makes it hard to determine if there are 1201(a)(1)-cognizable technical protection measures involved at all. Defendants appear to have a limited incentive to parse the specifics of these measures, as the larger threat of statutory damages for copyright infringement is likely to shape their strategy and settlement negotiations.

Suits Involving Video Games and Unauthorized Retransmission Have Limited Connection to 1201(a)(1)’s Original Intent

Six additional suits involve video games. However, they do not include the type of “piracy”-related fact patterns that were so important to the creation of 1201(a)(1).⁹⁹

Four of these suits are against creators and distributors of various pieces of software used to cheat in online video games. One of these suits appears to be less interested in addressing the cheating software itself, and instead seems motivated by a hope that the lawsuit will convince the parents of a 16-year-old Canadian teenager to make him stop bullying and harassing other players.¹⁰⁰

A fifth suit targets the creator of a video game emulator program, which does not directly

97 Compl. ¶ 145, *Simon J. Burchett Photography, Inc. v. Alibaba Group, Inc.*, No. 1:23-cv-09853-LLS (S.D.N.Y. Nov. 8, 2023), <https://storage.courtlistener.com/recap/gov.uscourts.nysd.609905/gov.uscourts.nysd.609905.1.0.pdf>

98 Compl. ¶ 51, *Garces v. Matheny*, No. 1:24-cv-00290-DII (W.D.Tex. Mar. 18, 2024), <https://storage.courtlistener.com/recap/gov.uscourts.txwd.1172779504/gov.uscourts.txwd.1172779504.1.0.pdf> [https://perma.cc/6FN7-PCTG].

99 See, e.g. House Report at 23 (“To operate in this environment, content providers will need both the technology to make new uses possible and the legal framework to ensure they can protect their work from piracy.”).

100 Compl. ¶ 15, *Rec Room Inc. v. M.Z.*, No. 2:23-cv-01586-KKE (W.D. Wash. Oct. 17, 2023) (“Because M.Z. is a teenager, RRI involved his parents, imploring them to properly supervise their son as the law requires them to do. They refused. RRI therefore brings this action against M.Z. to stop his damaging activities and recover compensation for the damage he has caused.”), https://storage.courtlistener.com/recap/gov.uscourts.wawd.327404/gov.uscourts.wawd.327404.1.0_2.pdf [https://perma.cc/ARX6-ECTW].

involve reproducing or distributing games.¹⁰¹ The sixth is against an individual who allegedly streams himself playing pre-release video games on a range of online platforms.¹⁰²

It is easy to understand why plaintiffs are motivated to take action to stop the behavior alleged in each of these complaints. It is less clear if the outcomes of any of these cases would change if they did not also include 1201(a)(1) claims.

One additional suit was brought by DISH Network against a defendant who allegedly retransmitted DISH broadcasts without authorization and sold set-top boxes that provided unauthorized access to DISH programming.¹⁰³ This suit did not involve an underlying copyright claim, presumably because DISH is merely a licensee of the programming it carries, not the copyright owner. Perhaps more relevant to this analysis, the complaint's first two claims are grounded in sections of federal communications law that govern unauthorized publication or use of communications.¹⁰⁴ The third (and final) claim invokes 1201(a)(1).

Most Cases that Include 1201(a)(1) Claims Are Unrelated to Copyright or 1201(a)(1)

There are an additional 15 cases from the period that included 1201(a)(1) claims at any point in the proceeding.¹⁰⁵ However, an examination of the facts underpinning those cases makes it clear that the majority do not have a connection to the underlying purpose of 1201(a)(1), or even involve 1201(a)(1) issues at all.

Most of these cases have a tenuous connection, if any, to copyright law. They are truly a grab-bag of suits, with 1201(a)(1) claims included in a haphazard manner, involving:

- allegations of rival bakery websites,¹⁰⁶
- counterfeit computer networking equipment,¹⁰⁷
- a conspiracy between DISH Networks, the Assistant US Attorney for Puerto Rico, and the

101 *Nintendo of America Inc. v. Tropic Haze LLC*, No. 1:24-cv-00082-JJM-LDA (D.R.I., 2024).

102 *Nintendo of America Inc. v. Keighin*, No. 1:24-cv-03101-GPG-STV (D. Colo., 2025).

103 *Dish Network L.L.C. v. Hibdon*, No. 3:21-cv-00655-DJH-RSE (W.D.Ky., 2023).

104 47 U.S.C. §§ 605(a), (e)(4).

105 This report counts cases where a 1201(a)(1) claim was raised at any point in the proceeding. In many cases, these claims dropped out or were resolved prior to the full resolution of the suit.

106 *BakersBodega, Inc. v. Rodriguez*, No. 3:24-cv-00046, 2023 WL 9057671 (S.D. Cal., 2023).

107 *Cisco Systems, Inc. v. Dexon Computer, Inc.*, No. 3:20-cv-04926, 2023 WL 5674788 (N.D. Cal., 2023).

FBI to steal trade secrets,¹⁰⁸

- a counterclaim in a patent dispute between two services that remove objectionable content from Hollywood movies,¹⁰⁹
- a dispute over the true owner of a piece of software,¹¹⁰

and three pro se suits involving

- impersonation on Facebook and Tinder,¹¹¹
- a prisoner losing access to the books they authored,¹¹² and
- an inheritance dispute.¹¹³

There are also a collection of suits that are more closely related to copyright or the intended purpose of 1201(a)(1), while still being relatively far afield. This includes a suit involving accusations that employees created a shadow code base during their work hours that they ultimately used to start a rival company,¹¹⁴ two cases related to scraping data from a competitor's website,¹¹⁵ one centered on trafficking in credentials to access *The Wall Street Journal* online,¹¹⁶ and one involving the creation of counterfeit event tickets.¹¹⁷

Whatever their merits, these disputes are unlikely to represent the types of fact patterns

108 *Naicom Corporation v. Dish Network Corporation*, No. 3:21-cv-01405, 2022 WL 19832096 (D.P.R., 2022).

109 *VidAngel LLC v. Clearplay, Inc.*, No. 2:14-cv-00160, 2022 WL 13492720 (D. Utah, 2022).

110 *Power v. Connectweb Techs., Inc.*, No. 1:22-cv-10030, 2023 US Dist. LEXIS 291173 (D. Mass. Dec. 18, 2023).

111 Amended Complaint and Demand for Jury Trial, *Albert v. Tinder, Inc.*, No. 0:22-cv-60496-JIC, (S.D. Fla. May 6, 2022).

112 *Fletcher v. Peters*, No. 23-CV-01054-SPM, 2024 WL 128958 (S.D. Ill. Jan. 11, 2024).

113 *Smith v. Knipe*, No. 6:23-cv-1718-WWB-LHP, 2024 WL 988853 (M.D. Fla. Feb. 13, 2024).

114 *Induril Indus., Inc. v. Salient Motion Inc.*, No. 8:23-cv-01650-JVS-KES, 2024 WL 1600661 (C.D. Cal. Mar. 4, 2024).

115 Second Amended Complaint, *Widespread Elec. Sales, LLC v. Upstate Breaker Wholesale Supply Inc.*, No. 3:20-cv-02541 (N.D. Tex. Nov. 10, 2022); Complaint, *Jobiak LLC v. Aspen Tech. Labs Inc.*, No. 2:23-cv-08728 (C.D. Cal. Oct. 17, 2023).

116 Complaint, *Dow Jones & Co. v. NIC.KL*, No. 22-CV-1070 (E.D. Pa. Mars 21, 2022).

117 Amended Complaint, *AXS Grp. LLC v. Internet Referral Serv. LLC*, No. 2:24-cv-00377-SPG-E (C.D. Cal. May 6, 2024).

envisioned by the drafters of 1201(a)(1) and are not really related to the purpose of 1201(a)(1) at all. Perhaps notably, only one of the cases (*The Wall Street Journal* credentials case) leads with the 1201(a)(1) claim in the complaint, which may further suggest that 1201(a)(1) claims in all other cases were secondary to the primary cause of action and potentially less critical to the outcome sought by the plaintiff. In many of these cases, the 1201(a)(1) claim was dropped by the plaintiff at some point in the process (either on their own motion or because they were dismissed by the court).

All Cases Connected to 1201(a)(1)'s Core Purpose Include Underlying Copyright Claims

The 12 cases involving the unauthorized use of enterprise software or photographs appear to be closest to the original intent of 1201(a)(1). Assuming the facts in the complaints are true, all involve defendants circumventing digital rights management controls to reproduce an underlying copyright-protected work without authorization.

In each of these cases, plaintiffs also include claims of copyright infringement against defendants. This means that none of them are relying on 1201(a)(1) for the ability to bring a claim against the defendants.

Plaintiffs in these cases appear to have a high rate of success. Two of the cases ended with results in the plaintiff's favor, with an additional eight having resulted in confidential settlements (two disputes remain ongoing as of this report's publication deadline). There are no cases with a public resolution where the plaintiff succeeded on its 1201(a)(1) claims and failed on its copyright infringement claims.

The Reality of 1201(a)(1) Litigation

1201(a)(1) is rarely litigated. When it is the subject of litigation, more than half the time the case has a limited connection to the intended purpose of the original provision, with the 1201(a)(1) claim added to a laundry list of other claims. For the small number of 1201(a)(1) cases that do have a nexus with its intended purpose, its primary use appears to be as an additional claim to bring against infringers of enterprise software. By volume of litigation, the primary utility of 1201(a)(1) is to give Dassault Systèmes a second claim to add to copyright infringement suits.



Balancing the Costs and Benefits of 1201(a)(1)



The 1201(a)(1) exemption process imposes a significant burden on a wide range of actors, from nonprofit organizations to law clinics to individual users. In return, in the past three years it has provided an additional cause of action in eight cases of enterprise software infringement, four cases of unauthorized use of photographs, four cases of video game cheating, one case of video game system emulation, and one case of publicly playing unreleased video games. All of these cases also included claims of copyright infringement, claims that offer a robust set of options to vindicate the rights of plaintiffs.

It appears that the benefits of 1201(a)(1) are limited and largely redundant with existing prohibitions against copyright infringement. In contrast, the burdens imposed by its exemption process are significant and critical to a wide range of socially beneficial activities.

Congress devoted significant attention to attempting to balance the diffuse costs and benefits to copyright owners and users of copyrighted works created by 1201(a)(1).¹¹⁸ It spent very little, if any, time considering the administrative burden imposed on the public seeking to prevent 1201(a)(1)'s provisions from interfering with legitimate activities.



118 “Instead, they prohibit certain actions and create exceptions to permit certain conduct deemed to be in the greater public interest, all in a way that balances the interests of copyright owners and users of copyrighted works.” House Report at 24.

Opportunities for Reform



Today, the administrative burden that 1201(a)(1) imposes on the public and the government is its most significant impact. This burden far outweighs the marginal benefit that the provision brings to a small number of rights holders. Congress should take steps to reduce that burden by reducing the scope of 1201(a)(1) and streamlining the exemption request process. The unbalanced impact that 1201(a)(1) imposes on the public also presents a number of opportunities for reform.¹¹⁹ These could include:

119 Many parties have suggested their own menu of reforms. See, e.g. Kathleen Burke, *Everything About the Section 1201 Process is Mad*, Public Knowledge (Oct. 7, 2021), <https://publicknowledge.org/everything-about-the-section-1201-process-is-mad/> [https://perma.cc/B33T-8CWJ]; US Copyright Office, *Section 1201 of Title 17: A Report of the Register of Copyrights* (June 2017), <https://www.copyright.gov/policy/1201/section-1201-full-report.pdf> [https://perma.cc/3F7X-BA2V]; US Copyright Office, *Section 1201 Study: Request for Additional Comments*, Docket No. COLC-2015-0012 (2016) (there were many comments submitted in 2016 as part of the proceeding that created the Register's 2017 report), <https://www.regulations.gov/document/COLC-2015-0012-0088/comment> [https://perma.cc/R7EW-3MLE]; Art Neill, *Fixing Section 1201: Legislative and Regulatory Reforms for the DMCA's Anti-Circumvention Provisions*, 19 TUL. J. TECH. & INTELL. PROP. 27 (2016), <https://journals.tulane.edu/TIP/article/view/2664/2486> [https://perma.cc/CE6Z-ZZUK]; Maryna Koberidze, *The DMCA Rulemaking Mechanism: Fail or Safe?*, 11 WASH. J. L. TECH. & ARTS 211 (2015), <https://digitalcommons.law.uw.edu/wjlta/vol11/iss3/5/> [https://perma.cc/DY9B-8DN2]; Breaking Down Barriers to Innovation Act of 2015, S. 990, 114th Cong. (2015), <https://www.congress.gov/bill/114th-congress/senate-bill/990> [https://perma.cc/54S3-SHZR]; *The Register's Perspective on Copyright Review*:

Eliminate 1201(a)(1) Entirely

Part of Congress' original justification for 1201(a)(1) was an interest in promoting electronic commerce.¹²⁰ While electronic commerce has unquestionably thrived since the provision was enacted, the volume of litigation involving it suggests that there is unlikely to be a causal link between the two or real, ongoing value to maintaining 1201(a)(1) at all.

A review of litigation initiated during the most recent exemption period indicates that rights holders would not be harmed by an absence of 1201(a)(1). With the exception of the DISH Network unauthorized retransmission case (which also included claims drawn from the Communications Act), every case reviewed as part of this study also included underlying copyright claims. Copyright infringement itself brings the possibility of significant civil penalties.¹²¹ None of the case fact patterns suggest that the plaintiff would have been significantly disadvantaged in vindicating their rights without the ability to bring an additional claim under 1201(a)(1), or that 1201(a)(1) meaningfully contributed to the damages recovered.

Nonetheless, 1201(a)(1) clearly imposes a burden on a range of public interest organizations and individuals, as well as on activities that are not themselves infringing. A quarter century after its passage, the “balance between the interests of content creators and information users”¹²² that Congress attempted to strike is deeply askew. Removing the provision entirely would represent a significant step toward restoring that balance.

Tie 1201(a)(1) Violations to Infringing Activity

By design, the current triennial process grants additional permission to engage in otherwise infringing work. It therefore creates a burden on activity that is permitted under the law (at worst) and socially beneficial (at best). A review of litigation from the previous period fails to identify cases where rights holders require the flexibility to bring 1201(a)(1) cases absent an underlying copyright infringement.

Instead of forcing advocates to seek additional permission for otherwise-permitted activities during the triennial process, Congress could revise 1201(a)(1) to require an underlying infringement. This would maintain the original intent that 1201(a)(1) act cumulatively to

Hearing before the H. Comm. on the Judiciary, 114th Cong. (April 29, 2015) (statement of Maria A. Pallante, Register of Copyrights), <https://www.copyright.gov/laws/testimonies/042915-testimony-pallante.pdf> [https://perma.cc/FG3D-2MHL].

¹²⁰ House Report at 22-23.

¹²¹ 17 U.S.C. § 504.

¹²² House Report at 26.

infringement¹²³ while removing the burden on noninfringing uses.

Such a change would eliminate the burden placed on the public to advocate for its existing rights in the triennial review.

Simplify the Exemption Process

If Congress elects to maintain the existing structure of 1201(a)(1), it could still take steps to simplify the triennial exemption process.

The Copyright Office has already taken commendable steps in this direction by creating a streamlined process for renewing exemptions for which there is no substantive opposition.¹²⁴ Nonetheless, Congress could reduce the burden on the public further by clarifying that the Copyright Office has the power to renew existing exemptions on its own motion. The Copyright Office itself could then propose renewing exemptions and recommend renewal in the absence of substantive opposition.

Copyright Office-led renewals would reduce the number of triennial participants in 2024 from 96 to 63. Furthermore, it would avoid situations where exemptions are not renewed because no public interest organization had the capacity to advocate for it. This appears to have been the fate of the current exemption permitting circumvention of video games in the form of computer programs for the purpose of allowing an individual with a physical disability to use alternative software or hardware input methods.¹²⁵

Fund the Existing Process

If Congress would prefer not to eliminate or revise 1201(a)(1), or to simplify the existing process, it could allocate funds to compensate the public interest and academic institutions that the triennial process relies on to represent the public.

123 House Report at 24.

124 See US Copyright Office, *Exemptions To Permit Circumvention of Access Controls on Copyrighted Works*, 88 Fed. Reg. 37486, at 37487 (June. 8, 2023) (to be codified at 37 C.F.R. pt. 201), <https://www.govinfo.gov/content/pkg/FR-2023-06-08/pdf/2023-12250.pdf> [https://perma.cc/DQ7M-CCRY].

125 See US Copyright Office, *Exemptions To Permit Circumvention of Access Controls on Copyrighted Works*, 88 Fed. Reg. 72013, at 72015 n. 19 (Oct. 19, 2023) (to be codified at 37 C.F.R. pt. 201), <https://www.govinfo.gov/content/pkg/FR-2023-10-19/pdf/2023-22949.pdf> [https://perma.cc/D2AR-R3ZR].

Such models have been discussed for decades¹²⁶ and would represent an acknowledgment that 1201(a)(1) shifts the burden of representing the public interest away from the government and onto a collection of private actors without a direct financial stake in the outcome.

The fate of the FloSports exemption request discussed above highlights the unfunded burden that the current exemption process places on requesters. FloSports submitted an initial request for an exemption to cover recording of live sporting events. However, it was unable or unwilling to continue to participate in the subsequent steps required by the current process. The Copyright Office was unable or unwilling to engage in its own investigation, and no public interest organization assumed responsibility for it. As a result, a potentially useful exemption was not fully explored.

Support for this advocacy could change that dynamic and help guarantee that the public interest is well represented during the triennial process.



126 *Study on Federal Regulation Prepared Pursuant to S. Res. 71 to Authorize a Study of the Purpose and Current Effectiveness of Certain Federal Agencies*, Committee of Governmental Affairs, United States Senate, Volume III, Public Participation in Regulatory Agency Proceedings, S. Rep. 95-71, at 91-127 (1977); https://www.google.com/books/edition/Study_on_Federal_regulation/aVHQAAAAAMAAJ [https://perma.cc/H9R7-RHLT].

Appendix A:

Participant Categories



Category	Explanation
Academic (Individual)	Professor with expertise in the relevant field acting on their own behalf
Academic (Institution)	An academic institution acting on its own behalf
Community Org	Informal or formal organization built around a specific community
Corporation	For-profit company
Government	Federal agency or commission outside of the Library of Congress
Individual	Individual without additional relevant academic credential
Law Clinic	Law clinic filing on its own behalf
Law Clinic (Individual Client)	Law clinic representing individual clients
Nonprofit Org	Nonprofit advocacy organization participating on behalf of its constituency
Nonprofit Org (Trade Association)	Industry trade association
Nonprofit Org (User)	Nonprofit advocacy organization participating on its own behalf as a user of the proposed exemption



Appendix B: 2024 1201 Process Participants



Organization	Organization Type	Direct Financial Stake in Exemption?	Proponent/Opponent
A Group of Hackers at DEF CON	Community Org	No	Proponent
AACS LA	Corporation	Yes	Opponent
Advanced Medical Technology Association (AdvaMed)	Nonprofit Org (Trade Association)	Yes	Opponent
Aleksandra Korolova	Academic (individual)	No	Proponent
Alliance for Automotive Innovation (Auto Innovators)	Nonprofit Org (Trade Association)	Yes	Opponent
American Association of University Professors	Nonprofit org	No	Proponent
American Consumer Institute	Nonprofit org	No	Opponent
American Council of the Blind	Nonprofit org	No	Proponent
American Farm Bureau Federation	Nonprofit Org (Trade Association)	No	Proponent
American Federation for the Blind	Nonprofit org	No	Proponent
Anonymous 1	Individual	No	Proponent
Anonymous 2	Individual	No	Proponent
Arvind Narayanan	Academic (individual)	No	Proponent
Associated Equipment Distributors	Nonprofit Org (Trade Association)	Yes	Opponent
Association of American Publishers	Nonprofit Org (Trade Association)	Yes	Opponent
Association of Equipment Manufacturers	Nonprofit Org (Trade Association)	Yes	Opponent

Organization	Organization Type	Direct Financial Stake in Exemption?	Proponent/Opponent
Association of Home Appliance Manufacturers (AHAM)	Nonprofit Org (Trade Association)	Yes	Opponent
Association of Transcribers and Speech-to-Text Providers	Nonprofit Org (Trade Association)	Yes	Proponent
Author Services, Inc.	Corporation	No	Opponent
Authors Alliance	Nonprofit org	No	Proponent
Auto Care Association	Nonprofit Org (Trade Association)	Yes	Proponent
Bobette Buster	Academic (individual)	No	Proponent
Brigham Young University - Idaho	Academic (institution)	No	Proponent
Canadian Repair Coalition	Nonprofit org	No	Proponent
Coalition of Medical Device Patients and Researchers	Community Org	No	Proponent
Consumer Reports	Nonprofit org	No	Proponent
Cranium AI	Corporation	Yes	Proponent
Crothall Facilities Management, Inc.	Corporation	Yes	Proponent
Cyberlaw Clinic at Harvard Law School	Law Clinic (individual client)	No	Proponent
Department of Justice, Antitrust Division	Government	No	Proponent
DVD CCA	Nonprofit Org (Trade Association)	Yes	Opponent
Electronic Frontier Foundation	Nonprofit org	No	Proponent
Entertainment Software Association	Nonprofit Org (Trade Association)	Yes	Opponent
Federal Trade Commission	Government	No	Proponent
FreelICT USA	Nonprofit Org (Trade Association)	Yes	Proponent
Glushko-Samuelson Intellectual Property Law Clinic, American University Washington College of Law	Law Clinic (individual client)	No	Proponent
HackerOne	Corporation	Yes	Proponent
Hacking Policy Council	Nonprofit Org (Trade Association)	No	Proponent

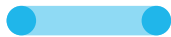
Organization	Organization Type	Direct Financial Stake in Exemption?	Proponent/Opponent
HathiTrust	Nonprofit org	No	Proponent
iFixIt	Corporation	Yes	Proponent
Institute of Scrap Recycling Industries	Nonprofit Org (Trade Association)	Yes	Proponent
Intellectual Property & Technology Clinic, USC Gould School of Law	Law Clinic (individual client)	No	Proponent
International Association of Scientific, Technical and Medical Publishers	Nonprofit Org (Trade Association)	Yes	Opponent
International Documentary Association	Nonprofit org	No	Proponent
J. Alex Halderman	Academic (individual)	No	Proponent
Jonathan Weiss	Individual	No	Proponent
Jordan Health Products (Avante)	Corporation	Yes	Proponent
Juelsgaard IP and Innovation Clinic, Stanford Law	Law Clinic (individual client)	No	Proponent
Kartemquin Educational Films	Nonprofit org (user)	No	Proponent
Kelvin Hammond	Individual	No	Proponent
Ken Austin	Individual	No	Proponent
Kevin Klyman	Academic (individual)	No	Proponent
Kinolab	Academic (institution)	No	Proponent
Laine Nooney	Academic (individual)	No	Proponent
Lauren van Haften-Schick	Academic (individual)	No	Proponent
Library Copyright Alliance	Nonprofit org	No	Proponent
Matt Blaze	Academic (individual)	No	Proponent
Matthew D. Green	Academic (individual)	No	Proponent
Medical Imaging Technology Alliance	Nonprofit Org (Trade Association)	Yes	Opponent
MEMA, The Vehicle Suppliers Association	Nonprofit Org (Trade Association)	Yes	Proponent
Metropolis International	Corporation	Yes	Proponent
Michael Delli Carpini	Academic (individual)	No	Proponent
Michael Weinberg	Individual	No	Proponent
Motion Picture Association	Nonprofit Org (Trade Association)	Yes	Opponent
Nate Harrison	Academic (individual)	No	Proponent

Organization	Organization Type	Direct Financial Stake in Exemption?	Proponent/Opponent
National Association of Manufacturers	Nonprofit Org (Trade Association)	Yes	Opponent
New Media Rights	Law Clinic	No	Proponent
OpenPolicy	Nonprofit org	Yes	Proponent
Organization for Transformative Works	Nonprofit org	No	Proponent
Peter Decherney	Academic (individual)	No	Proponent
Peter Henderson	Academic (individual)	No	Proponent
Philips North America	Corporation	Yes	Opponent
Public Knowledge	Nonprofit org	No	Proponent
Quinn Dombrowski	Academic (individual)	No	Proponent
Recording Industry Association of America	Nonprofit Org (Trade Association)	Yes	Opponent
Renee Hobbs	Academic (individual)	No	Proponent
Rhizome	Nonprofit org (user)	No	Proponent
Samuelson Law, Technology & Public Policy Clinic, UC Berkeley School of Law	Law Clinic (individual client)	No	Proponent
Sarah Banet-Weiser	Academic (individual)	No	Proponent
Sayash Kapoor	Academic (individual)	No	Proponent
Shayne Longpre	Academic (individual)	No	Proponent
Shiv Gaglani	Academic (individual)	No	Proponent
Skizit Powers	Individual	No	Proponent
Small Data Industries	Corporation	Yes	Proponent
Society for Cinema Media Studies	Nonprofit org	No	Proponent
Software Freedom Conservancy	Nonprofit org	No	Proponent
Software Preservation Network	Community Org	No	Proponent
Specialty Equipment Market Association (SEMA)	Nonprofit Org (Trade Association)	Yes	Proponent
Steven Bellovin	Academic (individual)	No	Proponent

Organization	Organization Type	Direct Financial Stake in Exemption?	Proponent/Opponent
The App Association	Nonprofit Org (Trade Association)	Yes	Opponent
Thomas Sullivan	Individual	No	Proponent
TriMedx Holdings, LLC	Corporation	Yes	Proponent
Tripp Ceyssens	Individual	No	Proponent
TTG Imaging Solutions, LLC	Corporation	Yes	Proponent
UCI Intellectual Property, Arts, and Technology Clinic	Law Clinic (individual client)	No	Proponent
Video Game History Foundation	Nonprofit org (user)	No	Proponent



Appendix C: Cases Involving 1201(a)(1) Litigation Claims Filed Between October 8, 2021, and October 28, 2024



- Complaint, Anduril Industries, Inc. v. Salient Motion Inc., No. 8:23-cv-01650 (C.D. Cal. Sept. 6, 2023), <https://www.courtlistener.com/docket/67766126/1/anduril-industries-inc-v-salient-motion-inc/> [https://perma.cc/CLQ8-M7XN].
- First Amended Complaint and Demand for Jury Trial, Ansys, Inc. v. QualiTau, Inc., No. 3:21-cv-09641 (C.D. Cal. May 17, 2022), <https://www.courtlistener.com/docket/61617526/ansys-inc-v-qualitau-inc/> [https://perma.cc/5ZM8-5MSE].
- Second Amended Complaint, AXS Grp. LLC v. Internet Referral Servs. LLC, No. 2:24-cv-00377 (C.D. Cal. Dec. 9, 2024), <https://www.courtlistener.com/docket/68163191/83/axs-group-llc-v-internet-referral-services-llc/> [https://perma.cc/GKS8-3MNC].
- Complaint, Bakersbodega, Inc. v. Rodriguez, 3:24-cv-00046 (S.D. Cal. Jan 12, 2024), <https://www.courtlistener.com/docket/68142952/6/bakersbodega-inc-v-rodriguez/> [https://perma.cc/CLE3-6M99].
- Second Amended Complaint, Bungie Inc v. Fisher, 2:23-cv-01143 (W.D. Wash. Aug 21, 2025), <https://www.courtlistener.com/docket/67656565/124/bungie-inc-v-fisher/> [https://perma.cc/7TL5-39WW].

- Amended Complaint, Bungie Inc v. Aimjunkies.com, 2:21-cv-00811 (W.D. Wash. May 19, 2022), <https://www.courtlistener.com/docket/59987462/34/bungie-inc-v-aimjunkiescom/> [https://perma.cc/ME3H-U859].
- Complaint, Bungie Inc v. L.L., 2:22-cv-00981 (W.D. Wash. July 15, 2022), <https://dockets.justia.com/docket/washington/wawdce/2:2022cv00981/312044> [https://perma.cc/BV5R-JAES].
- Amended Complaint, Cadence Des. Sys., Inc. v. Fenda USA Inc., 3:23-cv-05916 (N.D. Cal. Nov 27, 2023), <https://www.courtlistener.com/docket/68011183/cadence-design-systems-inc-v-fenda-usa-inc/> [https://perma.cc/YYM4-J4FR].
- Amended Complaint, Cadence Des. Sys., Inc. v. Syntronic AB, 3:21-cv-03610 (N.D. Cal. July 28, 2021), <https://www.courtlistener.com/docket/59905711/cadence-design-systems-inc-v-syntronic-ab/> [https://perma.cc/ET6M-BWVG].
- Amended Complaint, Cisco Sys., Inc. v. Dexon Comput., Inc., 3:20-cv-04926 (N.D. Cal. Mar 19, 2021), <https://www.courtlistener.com/docket/17373190/32/cisco-systems-inc-v-dexon-computer-inc/> [https://perma.cc/2W4H-38PG].
- Complaint, Dassault Systemes SolidWorks Corp. v. Linear Eng'g & Mfg, Corp, 8:23-cv-01444 (M.D. Fla. Jun 28, 2023), <https://www.courtlistener.com/docket/67535732/1/dassault-systemes-solidworks-corporation-v-linear-engineering/> [https://perma.cc/K8C7-HES7].
- Complaint, Dassault Systemes Deutschland GmbH v. Rajceвич, 2:23-cv-04490 (E.D. Pa. Nov 14, 2023), <https://www.courtlistener.com/docket/68006347/1/dassault-systemes-deutschland-gmbh-v-rajceвич/> [https://perma.cc/VWV5-M8C9].
- Complaint, Dassault Systemes SolidWorks Corp. v. Blissera Corp., 3:23-cv-03190 (N.D. Cal. Jun 27, 2023), <https://www.courtlistener.com/docket/67533947/1/dassault-systemes-solidworks-corporation-v-blissera-corp/> [https://perma.cc/G6XE-6UJJ].
- Amended Complaint, Dassault Systemes SolidWorks Corp. v. Torrey Pines Logic, Inc., 3:23-cv-01200 (S.D. Cal. Mar 11, 2024), <https://www.courtlistener.com/docket/67537963/dassault-systemes-solidworks-corporation-v-torrey-pines-logic-inc/> [https://perma.cc/2DN8-PALP].
- Amended Complaint, Dassault Systemes SolidWorks Corp. v. Bay Foam Packaging & Insulation, Inc., 8:23-cv-01462 (M.D. Fla. Aug 31, 2023), <https://www.courtlistener.com/docket/67541319/dassault-systemes-solidworks-corporation-v-bay-foam-packaging/> [https://perma.cc/XX2A-Q83L].
- Complaint, DISH Network L.L.C. v. Hibdon, 3:21-cv-00655 (W.D. Ky. Oct 28, 2021), <https://www.courtlistener.com/docket/60682361/1/dish-network-llc-v-hibdon/> [https://perma.cc/STM5-VRJR].
- Complaint, Dow Jones & Co., Inc. v. NIC.KL, Inc., 2:22-cv-01070 (E.D. Pa. Mar 21, 2022), <https://www.courtlistener.com/docket/63174899/1/dow-jones-company-inc-v-nickl-inc/> [https://perma.cc/LRW5-PKUW].

- Amended Complaint, Emmerich Newspapers, Inc. v. Particle Media, Inc., 3:23-cv-00026 (S.D. Miss. Jan 9, 2024), <https://www.courtlistener.com/docket/66719077/emmerich-newspapers-incorporated-v-particle-media-inc/> [<https://perma.cc/UA4U-FMF4>].
- Fletcher v. Peters, No. 3:23-cv-01054-SPM (S.D. Ill. Jan. 11, 2024) (mem. & order), <https://storage.courtlistener.com/recap/gov.uscourts.ilsd.95524/gov.uscourts.ilsd.95524.22.0.pdf> [<https://perma.cc/T9BE-KYLG>].
- Complaint, Garces v. Matheny, 1:24-cv-00290 (W.D. Tex. Mar 18, 2024), <https://www.courtlistener.com/docket/68353983/1/garces-v-matheny/> [<https://perma.cc/JVH8-XNAN>].
- Complaint, Jobiak LLC v. Aspen Technology Labs Inc., 2:23-cv-08728 (C.D. Cal. Oct 17, 2023), <https://www.courtlistener.com/docket/67888825/1/jobiak-llc-v-aspen-technology-labs-inc/> [<https://perma.cc/F2AQ-36SD>].
- Amended Complaint, Naicom Corp. v. Dish Network Corp., 3:21-cv-01405 (D.P.R. Oct 6, 2022), <https://www.courtlistener.com/docket/60318554/naicom-corporation-v-dish-network-corporation/> [<https://perma.cc/H6YT-JCHP>].
- Complaint, Nintendo of Am. Inc. v. Keighin, 1:24-cv-03101 (D. Colo. Nov 06, 2024), <https://www.courtlistener.com/docket/69351425/1/nintendo-of-america-inc-v-keighin/> [<https://perma.cc/5WVN-H85F>].
- Complaint, Nintendo of Am. Inc. v. Tropic Haze LLC, 1:24-cv-00082 (D.R.I. Feb 26, 2024), <https://www.courtlistener.com/docket/68284505/1/nintendo-of-america-inc-v-tropic-haze-llc/> [<https://perma.cc/3GS2-NXVU>].
- Amended Complaint, Power v. Connectweb Tech., Inc., 1:22-cv-10030 (D. Mass. May 12, 2022), <https://www.courtlistener.com/docket/62051853/26/power-v-connectweb-technologies-inc/> [<https://perma.cc/W32F-HCDM>].
- Complaint, Rec Room Inc. v. M.Z., No. 2:23-cv-01586 (W.D. Wash. Oct. 17, 2023), <https://www.courtlistener.com/docket/67890270/1/rec-room-inc-v-mz/> [<https://perma.cc/2GLE-TJQ3>].
- Amended Complaint, Simon J. Burchett Photography, Inc. v. Alibaba Group US Inc., No. 1:24-cv-01426 (S.D.N.Y. Feb. 24, 2024), <https://www.courtlistener.com/docket/67988787/simon-j-burchett-photography-inc-v-alibaba-group-us-inc/> [<https://perma.cc/T63E-7QJC>].
- Complaint, Simon J. Burchett Photography, Inc. v. AXSMARINE USA LLC, No. 1:24-cv-01426 (S.D.N.Y. Feb. 25, 2024), <https://www.courtlistener.com/docket/68281255/simon-j-burchett-photography-inc-v-axsmarine-usa-llc/> [<https://perma.cc/CMU4-K9CF>].
- Amended Complaint, Smith v. Knipe, No. 6:23-cv-01718 (M.D. Fla. May 13, 2024), <https://www.courtlistener.com/docket/67813554/smith-v-knipe/> [<https://perma.cc/6497-9FB7>].

- Complaint, Splunk Inc. v. Cribl, Inc., No. 3:22-cv-07611 (N.D. Cal. Dec. 2, 2022), <https://www.courtlistener.com/docket/66609122/splunk-inc-v-cribl-inc/> [https://perma.cc/5YCR-7XTR].
- Complaint, VidAngel LLC v. ClearPlay, Inc., No. C 13-5989 SI (N.D. Cal. Dec. 30, 2013), transferred to D. Utah, <https://www.courtlistener.com/docket/5085010/vidangel-llc-v-clearplay-inc/?page=1> [https://perma.cc/2HGG-CCN7].
- Amended Complaint, Widespread Electrical Sales LLC v. Upstate Breaker Wholesale Supply Inc., No. 3:20-cv-02541-K (N.D. Tex. – Dallas July 28, 2021), <https://www.courtlistener.com/docket/17509178/widespread-electrical-sales-llc-v-upstate-breaker-wholesale-supply-inc/> [https://perma.cc/QG66-E86B].
- First Amended Complaint, Wright v. Mail Media Inc., No. 1:23-cv-7124 (S.D.N.Y. June 3, 2024), <https://www.courtlistener.com/docket/67686879/51/wright-v-mail-media-inc/> [https://perma.cc/9ACV-L97V].



Appendix C: Report Extras



Exploring the history of the 1201(a)(1) process generated a collection of information that, while potentially interesting, does not have a place in the body of this report. Therefore, like the DVDs that have played such an outsized role in the triennial process over the years, this report includes three extras for 1201(a)(1) superfans:

Burden of Proof is an interactive visualization of triennial comments submitted to the Copyright Office from 2000 to 2024. In addition to exploring the data with various filters, high-quality prints are available in a range of sizes.

<https://1201.nyuengelberg.org/burdenofproof>

The **1201 Commenter Leaderboard** is a ranking of all the individuals who have filed comments in a triennial proceeding. Although some individual comments are filed on behalf of multiple organizations or clients, the leaderboard only counts such joint comments as a single comment for ranking purposes.

<https://1201.nyuengelberg.org/leaderboard>

The **2003 Media Explorer** is a way to explore media referenced by commenters during the 2003 triennial proceeding. During that proceeding, a large number of individuals filed comments in support of exemptions allowing circumvention of DRM protecting media. As part of their filings, commenters identified specific DVDs and albums they had purchased and were unable to make full use of because of DRM-based restrictions.

<https://1201.nyuengelberg.org/2003media>





Engelberg Center on Innovation Law & Policy
139 MacDougal Street Room 408 | New York, NY 10012



[NYUEngelberg.org](https://nyuengelberg.org)



engelberg.center@nyu.edu



[@NYUEngelberg](https://twitter.com/NYUEngelberg)



**ENGELBERG
CENTER**
on Innovation Law & Policy
NYU School of Law



NYU | LAW