



## Long Comment Regarding a Proposed Exemption Under 17 U.S.C. § 1201

*This Comment has been submitted by the UCI Intellectual Property, Arts, and Technology Clinic and Donaldson + Callif, LLP on behalf of Film Independent, the International Documentary Association, and Kartemquin Films.*

### ITEM A. COMMENTER INFORMATION

**Film Independent** is an organization that helps filmmakers make their movies, build an audience for their projects, and diversify the film industry. Film Independent puts on over 250 annual screenings and events to unite like-minded artists. These events include the Film Independent Spirit Awards, which recognizes the finest achievements of American independent filmmakers and the LA Film Festival, which showcases select new works from emerging and established independent storytellers. Film Independent also offers an artist development program to foster the careers of talented filmmakers.

**International Documentary Association** is an organization that seeks to assist the growth and development of documentary films and the overall documentary culture. IDA provides educational programs and resources to documentary makers of various skill levels. IDA's grant programs help filmmakers attain the financing necessary to create documentary films. IDA also advocates for major issues that affect documentary filmmakers, including free speech and fair use.

**Kartemquin Educational Films** is a not-for-profit media arts organization and collaborative center for documentary media makers who seek to foster a more engaged and empowered society. In 2016 Kartemquin celebrated 50 years of sparking democracy through documentary. A revered resource on issues of fair use, ethics, storytelling and civic discourse, Kartemquin is internationally recognized for crafting quality documentaries backed by innovative community engagement, and for its filmmaker development programs and media advocacy. The organization has won every major critical and journalistic prize, including multiple Emmy, Peabody, duPont-Columbia and Robert F. Kennedy journalism awards, Independent Spirit, IDA, PGA and DGA awards, and an Oscar nomination.

**Privacy Act Advisory Statement:** Required by the Privacy Act of 1974 (P.L. 93-579)

The authority for requesting this information is 17 U.S.C. §§ 1201(a)(1) and 705. Furnishing the requested information is voluntary. The principal use of the requested information is publication on the Copyright Office Web site and use by Copyright Office staff for purposes of the rulemaking proceeding conducted under 17 U.S.C. § 1201(a)(1). NOTE: No other advisory statement will be given in connection with this submission. Please keep this statement and refer to it if we communicate with you regarding this submission.

## **Representatives**

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## **ITEM B. PROPOSED CLASS ADDRESSED**

*Proposed Class 1:* Motion Pictures (including television shows and videos), as defined in 17 U.S.C. 101, where circumvention is undertaken solely in order to make use of short portions of the works for the purpose of criticism or comment, where the motion picture is lawfully made and acquired on a DVD protected by the Content Scrambling System, on a BluRay disc protected by the Advanced Access Control System, via a digital transmission protected by a technological measure, or a similar technological protection measure intended to control access to a work, where the person engaging in circumvention reasonably believes that non-circumventing alternatives are unable to produce the required level of high-quality source material.

## **ITEM C. OVERVIEW**

Film Independent, the International Documentary Association, and Kartemquin Films submit this Comment to express their support for the above-referenced modification to the exemption currently codified at 37 C.F.R. § 201.40(b)(1), which has been submitted by the Electronic Frontier Foundation, the Organization for Transformative Works, and New Media Rights.

While the existing exemption covering documentary filmmaking<sup>1</sup> has helped many creators avoid criminal liability, serious problems remain. These include burdensome and confusing screen capture language, and content-based limitations on the creative works being made. The exemption is confusing for many filmmakers, and the resulting fear and uncertainty has caused a severe chilling effect on creators seeking to make fair use.<sup>2</sup> The proposed modification would remove needless obstacles and add desperately needed clarity.

There is no reason whatsoever to surmise that the proposed modification would increase copyright infringement in any way. The first motion-picture-based exemption was granted in 2006, and numerous motion-picture based exemptions have been granted in every rulemaking since then. In that eleven-year timespan, there has not been a single allegation—nor has any evidence been introduced—that any motion-picture-based exemption was misused, or caused an increase in copyright infringement.

For these reasons, we urge the Register to recommend this modification to the Librarian of Congress.

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<sup>1</sup> 37 C.F.R. § 201.40(b)(1)(i). The Register has provisionally recommended this exemption for renewal. Exemption to Permit Circumvention of Access Controls on Copyrighted Works, 82 Fed. Reg. 49,550, 49,559 (proposed Oct. 26, 2017) (to be codified at 37 C.F.R. § 201) (“NPRM”).

<sup>2</sup> See Comments of the Electronic Frontier Foundation, Organization for Transformative Works, and New Media Rights (filed Dec. 18, 2017).