



April 24, 2018

Regan Smith  
United States Copyright Office  
Library of Congress  
101 Independence Ave. SE  
Washington, DC 20540

Re: Exemptions To Permit Circumvention of Access Controls on Copyrighted Works,  
U.S. Copyright Office Docket No. 2017-10, Class 1 (Joint Filmmakers) hearing  
exhibits

Dear Regan:

We write on behalf of Film Independent, Kartemquin Films, and the International Documentary Association. During the April 11, 2018 hearing in Washington, D.C. in the above-referenced matter, Copyright Office staff requested specific examples of adverse effects caused by 17 U.S.C. §1201's prohibition on circumvention, and we agreed to follow up with specific examples. In response to your request, we have prepared a list of adverse effects identified in the comments we filed in this proceeding.<sup>1</sup> The list is attached hereto as Appendix A.

We would be happy to provide additional information or answer questions as needed.

Thank you for your work on this important matter.

Very truly yours,

/s/ Jack Lerner

Jack I. Lerner  
UCI Intellectual Property,  
Arts, and Technology Clinic

/s/ Michael Donaldson

Michael C. Donaldson  
Donaldson + Callif LLP

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<sup>1</sup> UCI Intellectual Property, Arts, & Technology Clinic and Donaldson + Callif, LLP, Long Comment Regarding a Proposed Exemption under 17 U.S.C. § 1201 (Dec. 18, 2017), <https://www.copyright.gov/1201/2018/comments-121817/class1/class-01-initialcomments-joint-filmmakers.pdf>; UCI Intellectual Property, Arts, & Technology Clinic and Donaldson + Callif, LLP, Reply Comment Regarding a Proposed Exemption under 17 U.S.C. § 1201 (Mar. 14, 2018), [https://www.copyright.gov/1201/2018/comments-031418/class1/Class\\_01\\_Reply\\_Joint\\_Filmmakers.pdf](https://www.copyright.gov/1201/2018/comments-031418/class1/Class_01_Reply_Joint_Filmmakers.pdf).

## APPENDIX A

### ADVERSE EFFECTS CAUSED BY 17 U.S.C. §1201 PROHIBITION ON CIRCUMVENTION CLASS 1 (JOINT FILMMAKERS)

#### SUMMARY OF EVIDENCE PRESENTED IN 2017-2018 JOINT FILMMAKER COMMENTS <sup>1</sup>

Name of filmmaker	Name of project	Description of project	Fair use	Adverse effects caused by §1201's prohibition on circumvention	Where found in the record
Anonymous Filmmaker	Untitled	Hybrid doc/narrative film about famous film duo	Criticism & commentary on real individuals	Likely will not be able to make fair use	2017 Long Comment p.16
Steve Boettcher, Mike Trinklein, Boettcher/Trinklein Prods.	<i>Martin Luther: The Idea that Changed the</i>	Film exploring legacy of Martin Luther	Criticism & commentary about real events and cultural phenomena	Could not make fair use of material from DVD or Blu-ray	2017 Long Comment Appendix C
James Carman	<i>HyperParanØid</i>	Science fiction film about a dystopian future	Criticism & commentary on current environmental, economic, and geopolitical issues	Likely will not be able to make fair use	2018 Reply Comment p. 8; 2017 Long Comment Appendix D
Marc Delorme	Untitled	Film will utilize a nontraditional approach incorporating documentary within a standard dramatic film	Criticism & commentary about real world events, considering educational historical, cultural dimensions	May not be able to make fair use	2017 Long Comment Appendix M
Brenda Goodman	Untitled	Film about young singer from Mexico who comes to US illegally to escape a cartel and is targeted by ICE for playing music at immigration rally	Criticism & commentary about real events	Likely unable to make fair use. Looking into licensing as an alternative to fair use because no §1201 exemption available.	2017 Long Comment Appendix R

<sup>1</sup> UCI Intellectual Property, Arts, & Technology Clinic and Donaldson + Callif, LLP, Comment Regarding a Proposed Exemption under 17 U.S.C. § 1201 (Dec. 18, 2017), <https://www.copyright.gov/1201/2018/comments-121817/class1/class-01-initialcomments-joint-filmmakers.pdf> ("2017 Long Comment"); UCI Intellectual Property, Arts, & Technology Clinic and Donaldson + Callif, LLP, Reply Comment Regarding a Proposed Exemption under 17 U.S.C. § 1201 (Mar. 14, 2018), [https://www.copyright.gov/1201/2018/comments-031418/class1/Class\\_01\\_Reply\\_Joint\\_Filmmakers.pdf](https://www.copyright.gov/1201/2018/comments-031418/class1/Class_01_Reply_Joint_Filmmakers.pdf). ("2018 Reply Comment").

**APPENDIX A: ADVERSE EFFECTS CAUSED BY 17 U.S.C. §1201 PROHIBITION ON CIRCUMVENTION -- CLASS 1 (JOINT FILMMAKERS)**

Name of filmmaker	Name of project	Description of project	Fair use	Adverse effects caused by §1201's prohibition on circumvention	Where found in the record
Robert Grant	<i>Fake Blood</i>	Documentary/thriller hybrid	Criticism & commentary examining filmmaker's responsibility in portraying violent imagery on screen	May not be able to make contemplated fair use (concerned that film will not be considered "documentary")	2017 Long Comment pp. 16-17
Megan Griffiths, Matthew Brady, Alisa Tager	<i>The Night Stalker</i>	Film about Richard Ramirez, a serial killer known as "the night stalker"	Criticism & commentary about real events	Could not make fair use.	2017 Long Comment Appendix O
Lianne Halfon	Untitled	Film about life of John Hinckley, Jr. and influence of <i>Taxi Driver</i> on it	Criticism & commentary about real events and cultural products	May not be able to make fair use	2017 Long Comment Appendix F
Lianne Halfon	Untitled	Film based on flooding of the Colorado River	Criticism & commentary about real weather occurrences	May not be able to make fair use	2017 Long Comment p. 20, Appendix F
Jon Katzman	Untitled film about Henry Hill	Film about <i>Goodfellas</i> mobster Henry Hill	Criticism & commentary about real events	Would almost certainly have been made already without the exemption	2017 Long Comment Appendix E
Jon Katzman	Untitled film about <i>Fresh Prince of Bel-Air</i>	Film about making of <i>Fresh Prince of Bel-Air</i>	Criticism & commentary about real events	Would almost certainly have been made already without the exemption	2017 Long Comment Appendix E
Jon Katzman	Untitled film about Dr. Seuss	Film about the real life Dr. Seuss and his wife	Criticism and commentary on contemporary portrayals of works by Dr. Seuss	Project was not able to go forward	2017 Long Comment Appendix E
Jon Katzman	Untitled	Film comparing first Super Bowl with modern version of the Super Bowl.	Criticism & commentary about real events	Likely won't be able to make fair use; with a §1201 exemption, project may already have been made	2018 Reply Comment p. 9
Joshua Louis	<i>Devils Tree: Rooted Evil</i>	Narrative film about real location in Florida	Criticism & commentary about real events	Was not able to make fair use	2017 Long Comment p. 20
Joshua Louis	Untitled	Film about paranormal activity in hospitals	Criticism & commentary about real events and cultural phenomena	May not be able to make fair use; may cause additional time and expense	2017 Long Comment p. 20
Joshua Louis	Untitled	Film about organized crime	Criticism & commentary about real events and cultural phenomena	May not be able to make fair use; may cause additional time and expense	2017 Long Comment p. 20, Appendix L
Michael Mailer	Untitled	Film will use archive news footage	Criticism & commentary about real events	May not be able to make film.	2017 Long comment Appendix H

**APPENDIX A: ADVERSE EFFECTS CAUSED BY 17 U.S.C. §1201 PROHIBITION ON CIRCUMVENTION -- CLASS 1 (JOINT FILMMAKERS)**

Name of filmmaker	Name of project	Description of project	Fair use	Adverse effects caused by §1201's prohibition on circumvention	Where found in the record
Matthew Miller	Untitled	Parody of X Files	Criticism & commentary (parody)	Will not be able to make fair use	2017 Long Comment Appendix R; 2018 Reply Comment p. 19
Matthew Miller	<i>nirvanna the band the show</i>	Pop-culture mashup using parody and references	Criticism & commentary about contemporary popular culture	May not be able to make fair use	2017 Long Comment Appendix R
Matthew Miller	<i>Kill Hitler</i>	Examination of how integral changes to historical events could potentially lead to lasting effects on the current state of the world	Criticism & commentary about real events	May not be able to make fair use	2017 Long Comment Appendix R; 2018 Reply Comment p. 10
Roberto Miller	Untitled	Film about a professor, who, in the midst of a divided world, leads a team of international scientists on a unique experiment to facilitate a sense of unity in humans	Criticism & commentary on divided nature of society	Will not be able to make fair use	2017 Long Comment p. 17, Appendix K
Tim Pedegana	Untitled	Narrative film about 9/11	Criticism & commentary about real events	Will not be able to make fair use; fair use is essential to film going forward	2017 Long Comment pp. 19-20
Gail Prenskey	Judisch Kulturbund Project	Explores dilemmas the Jewish artists faced in Germany in the 1930s and contemporary artists confront around the world today	Criticism & commentary on real individuals and real events	Fear of liability precludes Ms. Prenskey from making the project. Does not know if under exemption because it is hybrid documentary and narrative.	2017 Long Comment p. 17
Alfred Spellman	Historical Figures	Present-day relationship between several historical figures	Criticism & commentary about real events and real individuals	May not be able to make fair use	2017 Long comment p. 19, Appendix Q
Rachel Ward	<i>Tesla &amp; Twain</i>	Fictional exploration of the real historical friendship between Mark Twain and Nikola Tesla	Criticism & commentary about real events and individuals	Could not make fair use.	2017 Long Comment p. 18, Appendix N