



Petition to Renew a Current Exemption Under 17 U.S.C. § 1201

8th Triennial Rulemaking

Please submit a separate petition for each current exemption for which renewal is sought.

NOTE: Use this form if you want to renew a current exemption without modification. If you are seeking to engage in activities not currently permitted by an existing exemption, including those that would require the expansion of a current exemption, you must submit a petition for a new exemption using the form available at <https://www.copyright.gov/1201/2021/new-petition.pdf>.

If you are seeking to expand a current exemption, we recommend that you submit both a petition to renew the current exemption without modification using this form, and, separately, a petition for a new exemption that identifies the current exemption, and addresses only those issues relevant to the proposed expansion of that exemption.

ITEM A. PETITIONERS AND CONTACT INFORMATION

Please identify the petitioners and provide a means to contact the petitioners and/or their representatives, if any. The “petitioner” is the individual or entity seeking renewal.

PETITIONERS:

INTERNATIONAL DOCUMENTARY ASSOCIATION, Los Angeles, CA
Simon Kilmurry, Executive Director

FILM INDEPENDENT, Los Angeles, California 90035
Josh Welsh, President

KARTEMQUIN EDUCATIONAL FILMS, Chicago, IL
Gordon Quinn, Artistic Director and founding member

CONTACT INFORMATION:

Counsel for petitioners:

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

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

ITEM B. IDENTIFY WHICH CURRENT EXEMPTION PETITIONERS SEEK TO RENEW

Check the appropriate box below that corresponds with the current temporary exemption (see **37 C.F.R. § 201.40**) the petitioners seek to renew. Please check only one box. If renewal of more than one exemption is sought, a separate petition must be submitted for each one.

Motion Pictures (including television programs and videos):

- Excerpts for educational purposes by college and university or K-12 faculty and students
- Excerpts for educational purposes by faculty in massive open online courses (“MOOCs”)
- Excerpts for educational purposes in digital and literacy programs offered by libraries, museums, and other nonprofits
- Excerpts for use in nonfiction multimedia e-books
- Excerpts for use in documentary filmmaking or other films where use is in parody or for a biographical or historically significant nature
- Excerpts for use in noncommercial videos
- For the provision of captioning and/or audio description by disability services offices or similar units at educational institutions for students with disabilities

Literary Works:

- Literary works distributed electronically (*i.e.*, e-books), for use with assistive technologies for persons who are blind, visually impaired, or have print disabilities
- Literary works consisting of compilations of data generated by implanted medical devices and corresponding personal monitoring systems, to access personal data

Computer Programs and Video Games:

- Computer programs that operate cellphones, tablets, mobile hotspots, or wearable devices (*e.g.*, smartwatches), to allow connection of a new or used device to an alternative wireless network (“unlocking”)
- Computer programs that operate smartphones, tablets and other all-purpose mobile computing devices, smart TVs, or voice assistant devices to allow the device to interoperate with or to remove software applications (“jailbreaking”)
- Computer programs that control motorized land vehicles, including farm equipment, for purposes of diagnosis, repair, or modification of the vehicle, including to access diagnostic data
- Computer programs that control smartphones, home appliances, or home systems, for diagnosis, maintenance, or repair of the device or system
- Computer programs for purposes of good-faith security research
- Computer programs other than video games, for the preservation of computer programs and computer program-dependent materials by libraries, archives, and museums
- Video games for which outside server support has been discontinued, to allow individual play by gamers and preservation of games by libraries, archives, and museums (as well as necessary jailbreaking of console computer code for preservation uses only), and discontinued video games that never required server support, for preservation by libraries, archives, and museums
- Computer programs that operate 3D printers, to allow use of alternative feedstock

ITEM C. EXPLANATION OF NEED FOR RENEWAL

Provide a brief explanation summarizing the continuing need and justification for renewing the exemption. The Office anticipates that petitioners may provide a paragraph or two detailing this information, but there is no page limit. While it is permissible to attach supporting documentary evidence as exhibits to this petition, it is not necessary. Below is a hypothetical example of the kind of explanation that the Office would regard as sufficient to support renewal of the unlocking exemption. The Office notes, however, that explanations can take many forms and may differ significantly based on the individual making the declaration and the exemption at issue.

We are Simon Kilmurry, the Executive Director of the International Documentary Association; Josh Welsh, President of Film Independent; and Gordon Quinn, Artistic Director and founding member of Kartemquin Educational Films.

Our organizations, together independent filmmakers and filmmaker organizations representing thousands of independent filmmakers across the nation, have participated in every cycle of the triennial rulemaking process specified in Section 1201 of the Digital Millennium Copyright Act since 2008. We are intimately familiar with the statute's language and legislative history, the triennial rulemaking process, and the evidentiary showing required in the process. Most importantly, we continue every day to experience firsthand the adverse effect that §1201 has on the ability of filmmakers nationwide to make fair use and other lawful uses, and the ways in which the current exemption set forth at 37 §CFR 201.40(b)(1)(i)(A) partially alleviates this adverse effect. We, our colleagues at IDA, Film Independent, and Kartemquin Films, and our counsel have personal knowledge that the need for the exemption continues to exist, and we have no reason to believe that this need will diminish during the next triennial period.

We each personally know many filmmakers who have found it necessary to rely on this exemption during the current triennial period. We also know that IDA and Film Independent staff have heard from many of the filmmakers we have encountered through our educational programs, services, and events who have needed to rely on the exemption.

As was the case when we petitioned for the current exemption and the Sixth Triennial Section 1201 Rulemaking, without an exemption in the next 3-year period, filmmakers will not be able to access the material they need in order to make fair use. Technological protection measures such as encryption continue to prevent access to nearly all fair use material filmmakers need, and this is especially true for the kind of high fidelity motion picture material filmmakers need to satisfy both distributors and viewers. We know of no developments in case law, technology, or business practices since the exemption went into effect that would render the prior rulemaking record obsolete or less justified. We do know, however, of many filmmakers who will need to make fair use during the next triennial period but will not be able to do so without an exemption to §1201.

In short, the problems that existed in 2017-2018 (and in previous rulemakings), when the record supporting the current exemption was developed, still exist today; we expect those problems to continue throughout the next triennial exemption period; without a renewal of this exemption, § 1201 will have an adverse effect on filmmakers seeking to make fair use; and finally, we know of no material changes to facts, law, or other circumstances that would render the evidence set forth in 2017-2018 (and in previous rulemakings) obsolete or any less justified, or otherwise suggest that the renewal of this exemption is not warranted.

For these reasons, the exemption should be renewed.

ITEM C. EXPLANATION OF NEED FOR RENEWAL (CONT'D)

[Empty box for explanation of need for renewal]

ITEM D. DECLARATION AND SIGNATURE

The declaration is a sworn statement made under penalty of perjury, and must be signed by one of the petitioners named above.

I declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. Based on my own personal knowledge and experience, I have a good faith belief that but for the above-selected exemption's continuation during the next triennial period (October 2021 – October 2024), technological measures controlling access to relevant copyrighted works are likely to diminish the ability of relevant users to make noninfringing uses of these works, and such users are likely to rely upon the above-selected exemption during the next triennial period.
2. To the best of my knowledge, there has not been any material change in the facts, law, or other circumstances set forth in the prior rulemaking record (available at <https://www.copyright.gov/1201/2018>) that originally demonstrated the need for the above-selected exemption, such that renewal of the exemption would not be justified.
3. To the best of my knowledge, the explanation provided in Item C above is true and correct, and supports the above statements.

Name/Organization:

If the petitioner is an entity, this declaration must be signed by an individual at the organization having appropriate personal knowledge.

Simon Kilmurry, Executive Director, International Documentary Association; Josh Welsh, President, Film Independent; Gordon Quinn, Artistic Director and co-founder of Kartemquin Educational Films, Inc.

Signature:

This declaration may be signed electronically (e.g., "/s/ John Smith").

/s/ Simon Kilmurry /s/ /s/ Josh Welsh /s/ /s/ Gordon Quinn /s/

Date:

July 21, 2020