

September 28, 2026

The Honorable Shira Perlmutter
Register of Copyrights and Director
U.S. Copyright Office
101 Independence Avenue SE
Washington, District of Columbia 20559

**Re: Comments of the Association for Competitive Technology Tenth Triennial Section
1201 Proceeding, 2027 Cycle (Docket No. 2026–4)**

The Association for Competitive Technology (ACT) appreciates the opportunity to participate in the Copyright Office’s tenth triennial proceeding under Section 1201 of the Digital Millennium Copyright Act. ACT represents the interests of the small business technology community, including developers that create and license software and digital content. These developers depend on technological protection measures (TPMs) to manage access to their products and protect their work. At the same time, ACT recognizes the importance of appropriately tailored exemptions for demonstrated noninfringing uses.

The United States’ copyright laws were created to encourage creativity and innovation for the public good. That purpose depends on balancing the rights of copyright owners with appropriate limitations on those rights, including fair use. In enacting the DMCA, Congress sought to preserve that balance in the digital environment by protecting creators’ ability to control access to their works through TPMs while accounting for evolving technologies and legitimate uses of copyrighted works. ACT believes the DMCA has largely succeeded in striking this balance and continues to provide software developers with the critically important ability to protect their software from unlawful access. The DMCA’s protections and incentives have played an important role in supporting the growth of the app ecosystem, connected technologies, and the businesses built around them.

For our members, TPMs and the DMCA’s legal protections help safeguard both the economic viability of their businesses and the security of their software, thereby protecting their customers and consumers more broadly. Our members build software using tools subject to a wide range of licensing structures, from highly permissive open-source licenses to more restrictive per-seat arrangements. No single licensing model fits every need, making clear rules and reliable enforcement mechanisms important across the spectrum.

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The Office should assess each requested exemption based on the specific use and adverse effect demonstrated in the record. Section 1201 calls for an inquiry into whether the prohibition on circumvention is adversely affecting, or is likely to adversely affect during the next three years, users' ability to make noninfringing uses of a particular class of copyrighted works. That inquiry should identify the works, the proposed use, the access control at issue, and the manner in which that control prevents the use. A valuable purpose, such as repair or security research, does not by itself establish that every proposed means of circumvention is necessary to achieve that purpose. Consistent with the statutory standard and factors set forth in 17 U.S.C. § 1201(a)(1)(B)–(C), the Office should require a sufficient showing that the existing access controls actually prevent the identified noninfringing use.

Renewal should preserve the scope of an existing exemption unless the record supports a change. The streamlined renewal process provides a means for the Office to consider renewing existing exemptions. It should not transform a request to retain existing relief into an unexamined expansion of covered devices, works, users, or activities. Where a proponent seeks broader access, the Office should require evidence supporting the proposed expansion rather than treating renewal alone as sufficient justification.

Exemption language should remain appropriately narrow and distinguish legitimate noninfringing uses from broader access to protected material. If the record establishes a need for circumvention to make a noninfringing use, the exemption should describe that use and extend no further than necessary to permit it. Depending on the class, relevant limits may concern the particular work or device, the purpose of access, the person performing the activity, or the treatment of material obtained through circumvention. ACT has previously raised concerns about the effects of overly broad exemptions in its comments on device jailbreaking¹ and security research.²

In tailoring exemptions, the Office should also consider their practical effects on small developers and businesses. Our members use measures including encryption, digital rights management, and authentication to control access to software and paid content. For a developer offering a free version, subscription features, or in-app purchases, these controls can help distinguish content available to every user from content made available only after payment. Weakening an access control beyond what is necessary to enable a demonstrated noninfringing use could undermine these protections and impose costs that smaller firms are less able to absorb. In considering a proposed exemption's effect on the market for, or value of, copyrighted

¹ *Comments of ACT | The App Association on Proposed Class 11: Computer Programs – “Jailbreaking”*, ASS'N FOR COMPETITIVE TECH, https://actonline.org/wp-content/uploads/02122018_ACT-DMCA-Triennial-Rulemaking-Comment_Jailbreaking-final.pdf

² *Comments of ACT | The App Association on Proposed Class 13: Computer Programs – Security Research*, ASS'N FOR COMPETITIVE TECH, https://www.copyright.gov/1201/2021/comments/opposition/Class_13_Opp'n_ACT%20The%20App%20Association.pdf.

works, the Office should examine evidence concerning the impact on these developers as well as on the users seeking relief.

ACT urges the Office to exercise caution when considering new or expanded exemptions to Section 1201 of the DMCA that implicate concerns extending beyond the core purposes of copyright law. To the extent that requested exemptions raise issues of privacy, consumer protection, interoperability, or data security, the Office should seek additional input from experts and other relevant agencies.

TPMs can also serve important functions beyond protecting copyrighted works, including safeguarding software integrity and protecting patient privacy and medical information in connected health products. These considerations warrant particular care in designing a proposed exemption, especially where it would apply to third parties or interconnected devices. The Office should evaluate these concerns based on the current record and avoid assuming that a copyright exemption resolves separate questions of privacy, product safety, or authorization under other law.

ACT therefore urges the Office to retain a record-based approach: identify the demonstrated obstacle to a noninfringing use, preserve the established scope of existing exemptions, and require a separate showing for any proposed expansion. Where relief is warranted, the Office should tailor the exemption narrowly enough to enable the established noninfringing use while preserving the access controls on which creators and small businesses rely.

Respectfully submitted,



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