

22. Proposed exemption: Computer issues: encryption research, data file formats, recovery of passwords, personally identifying material.

A number of commenters raised issues relating to encryption and security research and to access controls that permit the privacy of users of works to be compromised. These proposals, in effect, sought broadening of statutory exemptions enacted as part of the DMCA such as section 1201(d)–(g) and (i)–(j). In some cases, the commenters failed to explain why the existing exemptions are insufficient. Most commenters also failed to provide specific examples of problems leading to the alleged need for an exemption and, therefore, the Register cannot recommend exemptions in these cases.

23. Proposed exemption: Conversion of data file formats and source code.

A few commenters submitted comments relating to source code or data file formats, but insufficient information was provided to understand the nature of the problem, or even whether the prohibition against circumvention contained in section 1201(a)(1) is implicated.

24. Proposed exemption: Privacy and personally identifying information.

Two comments addressed issues relating to privacy and the protection of personally identifying information. However, insufficient information was provided to ascertain the nature and extent of the problem, or the degree to which access controls were involved. To the extent that the concern relates to disclosure of personally identifying information, the commenters did not explain why the existing statutory exemption in section 1201(i) does not adequately address the problem.

25. Other comments beyond the scope of the rulemaking: Webcasting, Limitations of Liability for Online Service Providers and the Antitrafficking provisions of the DMCA.

A number of comments discussed issues unrelated to the anticircumvention provision that are beyond the scope of this rulemaking. Some of these comments consisted of criticisms of the DMCA generally, without citing any particular facts to support such criticism.<sup>6</sup> Other comments attacked particular aspects of the DMCA, e.g., criticism of the rate established for the statutory license for the webcasting of sound recordings, alleged adverse effects of section 512 relating to limitations on liability for online service providers, and the

antitrafficking provisions of section 1201(a)(2) and 1201(b).

#### IV. Conclusion

Having considered the evidence in the record, the contentions of the parties, and the statutory objectives, the Register of Copyrights recommends that the Librarian of Congress publish the four classes of copyrighted works designated above, so that the prohibition against circumvention of technological measures that effectively control access to copyrighted works shall not apply to persons who engage in noninfringing uses of those particular classes of works.

Dated: October 27, 2003.

**Marybeth Peters,**

*Register of Copyrights.*

#### Determination of the Librarian of Congress

Having duly considered and accepted the recommendation of the Register of Copyrights that the prohibition against circumvention of technological measures that effectively control access to copyrighted works shall not apply to persons who engage in noninfringing uses of the four classes of copyrighted works designated above, the Librarian of Congress is exercising his authority under 17 U.S.C. 1201(a)(1)(C) and (D) and is publishing as a new rule the four classes of copyrighted works that shall be subject to the exemption found in 17 U.S.C. 1201(a)(1)(B) from the prohibition against circumvention of technological measures that effectively control access to copyrighted works set forth in 17 U.S.C. 1201(a)(1)(A) for the period from October 28, 2003 through October 27, 2006, as follows:

#### List of Subjects in 37 CFR Part 201

Cable television, Copyright, Exemptions to prohibition against circumvention, Literary works, Recordings, Satellites.

#### Final Regulations

■ For the reasons set forth in the preamble, 37 CFR part 201 is amended as follows:

■ 1. The authority citation for part 201 continues to read as follows:

**Authority:** 17 U.S.C. 702.

■ 2. Section 201.40 is amended by revising paragraph (b) and by adding new paragraph (c).

The revisions and additions to § 201.40 read as follows:

#### § 201.40 Exemption to prohibition against circumvention.

\* \* \* \* \*

(b) *Classes of copyrighted works.*  
Pursuant to the authority set forth in 17

U.S.C. 1201(a)(1)(C) and (D), and upon the recommendation of the Register of Copyrights, the Librarian has determined that during the period from October 28, 2003, through October 27, 2006, the prohibition against circumvention of technological measures that effectively control access to copyrighted works set forth in 17 U.S.C. 1201(a)(1)(A) shall not apply to persons who engage in noninfringing uses of the following four classes of copyrighted works:

(1) Compilations consisting of lists of Internet locations blocked by commercially marketed filtering software applications that are intended to prevent access to domains, websites or portions of websites, but not including lists of Internet locations blocked by software applications that operate exclusively to protect against damage to a computer or computer network or lists of Internet locations blocked by software applications that operate exclusively to prevent receipt of e-mail.

(2) Computer programs protected by dongles that prevent access due to malfunction or damage and which are obsolete.

(3) Computer programs and video games distributed in formats that have become obsolete and which require the original media or hardware as a condition of access. A format shall be considered obsolete if the machine or system necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.

(4) Literary works distributed in ebook format when all existing ebook editions of the work (including digital text editions made available by authorized entities) contain access controls that prevent the enabling of the ebook's read-aloud function and that prevent the enabling of screen readers to render the text into a specialized format.

(c) *Definitions.* (1) "Internet locations" are defined to include domains, uniform resource locators (URLs), numeric IP addresses or any combination thereof.

(2) "Obsolete" shall mean "no longer manufactured or reasonably available in the commercial marketplace."

(3) "Specialized format," "digital text" and "authorized entities" shall have the same meaning as in 17 U.S.C. 121.

Dated: October 28, 2003.

**James H. Billington,**

*The Librarian of Congress.*

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<sup>6</sup> See, e.g., C43 and C44.