

Petition for Proposed Exemption Under 17 U.S.C. § 1201

Note: This is a Word document that allows users to type into the spaces below.

Please submit a separate petition for each proposed exemption

Item 1. Submitter and Contact Information

Clearly identify the submitter, and, if desired, provide a means for others to contact the submitter or an authorized representative of the submitter by email and/or telephone. (Parties should keep in mind that any private, confidential, or personally identifiable information appearing in this petition will be accessible to the public.)

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Item 2. Brief Overview of Proposed Exemption

Provide a brief statement describing the proposed exemption (ideally in one to three sentences), explaining the type of copyrighted work involved, the technological protection measure ("TPM") (or access control) sought to be circumvented, and any limitations or conditions that would apply (e.g., a limitation to certain types of users or a requirement that the circumvention be for a certain purpose).

Consumers should be legally permitted to remove DRM from electronic books that they have purchased in order to back them up, read them on other e-book platforms, or otherwise make section 107 fair use of the material. This circumvention should only be permitted if the use the customer wishes to make is fair and they have purchased the material. It should not apply to e-books checked out from libraries, or for illegal uses such as piracy.

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 3. Copyrighted Works Sought to be Accessed

Identify the specific class, or category, of copyrighted works that the proponent wishes to access through circumvention. The works should reference a category of work referred to in section 102 of title 17 (e.g., literary works, audiovisual works, etc.). Unless the submitter seeks an exemption for the entire category in section 102, the description of works should be further refined to identify the particular subset of work to be subject to the exemption (e.g., e-books, computer programs, motion pictures) and, if applicable, by reference to the medium or device on which the works reside (e.g., motion pictures distributed on DVD).

It applies to the subset of literary works that encompasses books that are sold in electronic, “e-book” formats. For example, e-books sold via Amazon for Kindle, Barnes & Noble for Nook, or Kobo for the Kobo reader.

Item 4. Technological Protection Measure

Describe the TPM that controls access to the work. The petition does not need to describe the specific technical details of the access control measure, but should provide sufficient information to allow the Office to understand the basic nature of the technological measure and why it prevents open access to the work (e.g., the encryption of motion pictures on DVD using the Content Scramble System or the cryptographic authentication protocol on a garage door opener).

The technological protection measure that controls the work is a Digital Rights Management lock that encrypts the electronic books to prevent them from being read in unauthorized reader hardware. Customers who purchase an e-book from Amazon can only read it using a Kindle device or Kindle software application. It cannot be read by other readers, even ones that would ordinarily be able to read an e-book without this DRM.

This effectively leaves customers at the mercy of their e-book vendor. If the e-book vendor should go out of business, the customers could no longer be able to obtain the device necessary to read the book they have purchased.

Item 5. Noninfringing Uses.

Identify the specific noninfringing uses of copyrighted works sought to be facilitated by circumvention (e.g., enabling accessibility for disabled users, copying a lawfully owned computer program for archival purposes, etc.), and the legal (statutory or doctrinal) basis or bases that support the view that the uses are or are likely noninfringing (e.g., because it is a fair use under section 107, it is a permissible use under section 117). Include a brief explanation of how, and by whom, the works will be used.

The primary noninfringing uses are to permit reading the e-books on other devices (e.g. reading Kindle e-books on a Barnes & Noble or Kobo device), and to allow archiving them in a universally-readable form against the possibility the current e-book vendor will go out of business.

Barring the presence of DRM, consumers have been found to have the fair use right to copy media into different formats for “time shifting” (*Sony Corp. of America v. Universal City Studios Inc.*) and “space shifting” (*Recording Industry Association of America v. Diamond Multimedia Inc.*). It should thus be permitted to copy e-books into other e-book formats, apart from the restriction the DMCA imposes against breaking DRM.

Item 6. Adverse Effects.

Explain how the inability to circumvent the TPM has or is likely to have adverse effects on the proposed noninfringing uses (e.g., the TPM limits wireless connection to the network of the mobile carrier from which the cellphone was originally purchased or prevents an electronic book from being accessed by screen reading software for the blind). The description should include a brief explanation of the negative impact on uses of copyrighted works. The adverse effects can be current, or may be adverse effects that are likely to occur during the next three years, or both. While the petition must clearly and specifically identify the adverse effects of the TPM, it need not provide a full evidentiary basis for that claim.

Over the last few years, a number of e-book stores have ceased operations due to bankruptcy or purchase by another entity. These include, but are not limited to, MobiPocket, Embiid, eReader, Fictionwise, and JManga. In all cases, consumers who had purchased e-books from these businesses lost access to books they had purchased. In most cases they could download the books and the reader before the site closed, but would have no recourse should they lose that software. Nor could they read the books on future devices for which software might not then exist.

It is possible that other e-book stores could close, putting even more customers in the same situation. Permitting consumers to remove the DRM from their purchases would mean they would be guaranteed to be able to read their e-books on whatever platforms become available in the future.

DRM also serves to restrict consumers' choice change e-reader platforms. As long as consumers are not permitted to remove DRM from their purchases, anything they buy for a Kindle must stay on a Kindle, or within a Kindle application. They cannot take it with them to a Nook. Permitting them to remove DRM would mean that they could do so. It would also encourage e-book stores to automate the process of switching to them so consumers could bring their e-books over from whatever other store they previously used. This could help to foster competition in an e-book market largely controlled by one store.