

## **Short Comment Regarding a Proposed Section 1201 Exemption**

### **Item 1. Commenter Information**

As the principal national trade association of the U.S. book publishing industry, AAP represents some 400 member companies and organizations that include most of the major commercial book and journal publishers in the United States, as well as many small and non-profit publishers, university presses and scholarly societies. AAP members publish hardcover and paperback books and journals in every field of human interest. In addition to publishing print materials, many AAP members are producing e-books as well as computer programs, databases, Web sites and a variety of multimedia works for use in online and other digital formats.

### **Item 2. Proposed Class Addressed**

*Proposed Class 9: Literary Works Distributed Electronically – Assistive Technologies*

“This proposed class would allow circumvention of access controls on lawfully made and acquired literary works distributed electronically for purposes of accessibility for persons who are print disabled. This exemption has been requested for literary works distributed electronically, including e-books, digital textbooks, and PDF articles.”

### **Item 3. Statement Regarding Proposed Exemption**

In prior proceedings, the Register of Copyrights and/or the Librarian of Congress have been notably flexible and generous in applying the rules on proponents’ evidentiary burdens in order to grant and renew successively broader versions of exemptions that authorize circumvention of access controls which restrict the use of assistive technologies to make non-infringing uses of literary works distributed electronically. In particular, they have granted the renewal requests notwithstanding the absence of evidence demonstrating that a previously-granted exemption for this class of works has actually been used to provide a remedy for the identified problems it was supposed to address. However, AAP acknowledges that these determinations were also based upon the consideration of changing market conditions which, despite the proliferation of mobile devices used to read such works, do not yet offer inherent accessibility across such platforms or in the commercially-available versions of such works for consumers with print disabilities.

Insofar as the pending Class 9 proposal seeks to renew the current exemption (adopted in 2012) *without revision*, AAP does not object to granting that proposal, despite our disagreement with the 2012 rulemaking decision to eliminate the requirement in previous versions of the exemption that circumvention was permitted only if all existing e-book editions of the work (including digital text editions made available by authorized entities under Section 121 of the Copyright Act) contained restrictive access controls. AAP urges the Register and the Librarian to ensure that any continued relaxation of the evidentiary rules deemed necessary to reach this result doesn’t extend beyond their consideration of this proposed class, and to remain open to narrowing or rejecting such an exemption in the future as market conditions – including the implementation of ePub3 and HTML5 standards – limit the variability of accessibility capabilities across such devices and increase the commercial availability of accessible versions of such works in the marketplace.