

SIIA's Short Comment Regarding a Proposed Exemption For Space-Shifting and Format-Shifting of Literary Works Under 17 U.S.C. 1201

Item 1. Commenter Information

The Software & Information Industry Association (SIIA) is the principal trade association for the software and digital information industries. The more than 700 software companies, data and analytics firms, information service companies, and digital publishers that make up SIIA's membership serve nearly every segment of society, including business, education, government, healthcare and consumers. As leaders in the global market for software and information products and services, they are drivers of innovation and economic strength—software alone contributes \$425 billion to the U.S. economy and directly employs 2.5 million workers and supports millions of other jobs.

Item 2. Proposed Class Addressed

Proposed Class 10: Literary works distributed electronically – space-shifting and format-shifting

Item 3. Statement Regarding Proposed Exemption

The comments filed in support of an exemption for Class 10 fail to provide a factual basis and substantive legal arguments to support of the exemption being proposed and to support the notion that space shifting and format shifting are noninfringing acts. The burden of proving that an exemption should be granted is on the proponents of the exemption. The submissions merely allege that access controls are preventing people from space shifting or format shifting without providing any evidence that this is the case. Since the only comments that were filed merely make a perfunctory request for the exemption without demonstrating substantial adverse effect on a noninfringing use and without providing the requisite evidentiary or legal support, the Copyright Office must decline to recommend granting the proposed exemption for Class 10.

The Copyright Office has considered this exemption request in various forms in numerous prior triennial rulemaking proceedings and has properly rejected them each and every time. The submissions in the present rulemaking offer no new evidence, legal arguments or legal authorities in support of the exemption. To date, no court has held that space shifting or format shifting is a fair use. Nor has any new legislation created a right to access a copyrighted work on a specific device or in a particular format.

The mere fact that a consumer may prefer to access a particular literary work on a specific device as a matter of convenience does not in itself justify the proposed exemption. Moreover, any such inconvenience is clearly outweighed by the potential harm to copyright owners resulting from the increased risk of infringement associated with allowing digital distributions under an exemption. The burgeoning marketplace of literary works continues to generate new ways for consumers to obtain, access and enjoy literary works for use on the devices of their choosing. The ability of literary work copyright owners to protect their works through the use of technological protection measures plays a large part in this evolution.