

**Before the
UNITED STATES COPYRIGHT OFFICE
Washington, D.C.**

In the Matter of:

Tenth Triennial Rulemaking Proceedings
Under Section 1201 of Title 17, 2027 Cycle

Docket No. 2026-4

**COMMENT REGARDING A PETITION BY THE
ORGANIZATION FOR TRANSFORMATIVE WORKS TO RENEW AN
EXISTING EXEMPTION UNDER 17 U.S.C. § 1201**

A. COMMENTER INFORMATION

The Entertainment Software Association (“ESA”) is the United States trade association serving companies that publish computer and video games for video game consoles, handheld video game devices, personal computers, and the internet. It represents nearly all of the major video game publishers and major video game platform providers in the United States.

The Motion Picture Association, Inc. (“MPA”) is a trade association representing some of the world’s largest producers and distributors of motion pictures and other audiovisual entertainment for viewing in theaters, on prerecorded media, over broadcast TV, cable and satellite services, and on the internet. The MPA’s members are: Amazon Studios LLC, Netflix Studios, LLC, Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Universal City Studios LLC, Walt Disney Studios Motion Pictures, and Warner Bros. Entertainment Inc.

The Recording Industry Association of America, Inc. (“RIAA”) is a nonprofit trade organization that supports and promotes the creative and financial vitality of recorded music and the people and companies that create it in the United States. RIAA’s several hundred members—ranging from major American music companies with global reach to artist-owned labels and small businesses—make up the world’s most vibrant and innovative music community. RIAA’s members create, manufacture, and/or distribute the majority of all legitimate recorded music produced and sold in the United States. In supporting its members, RIAA works to protect the intellectual property and First Amendment rights of artists and music labels.

* * *

All three organizations represent companies that create and distribute valuable creative works digitally and depend on access control technologies to enable the products and services that consumers enjoy. As such, they have a keen interest in this proceeding and ensuring that any exemptions strike an appropriate balance between protection of creative works and reasonable access for noninfringing purposes.

B. EXISTING EXEMPTIONS ADDRESSED

Excerpts of motion pictures for use in noncommercial videos, as codified at 37 C.F.R. § 201.40(b)(1)(i)(B).

Submission on behalf of ESA, MPA, and RIAA

Motion Pictures – Noncommercial Videos

C. JOINT CREATORS’ COMMENT REGARDING RENEWAL PETITION

ESA, MPA, and RIAA (the “Joint Creators”) do not oppose renewal of the existing exemption for motion pictures on DVDs, Blu-ray discs, and digitally transmitted video for use of short portions for the purpose of criticism or comment in noncommercial videos, as codified at 37 C.F.R. § 201.40(b)(1)(i)(B) (the “noncommercial video exemption”). However, the sole renewal petition for that exemption, submitted by the Organization for Transformative Works (“OTW”), requests modifications to the text of the exemption as written in the *Code of Federal Regulations*.¹ OTW requests that the Office revert to the language of the exemption from the 2008 rulemaking—specifically to cover DVDs, Blu-ray discs, and streaming “when circumvention is accomplished solely in order to accomplish the incorporation of short portions of motion pictures into new works for the purpose of criticism or comment, and where the person engaging in circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of the use.”²

As the Office is aware, its Notice of Inquiry expressly states that “[o]nly petitions requesting renewal of current exemptions **as currently written** in the *Code of Federal Regulations*, **without modification**, may be considered under the streamlined renewal procedure.”³ Maintaining this procedure is critical because under the Office’s streamlined renewal process, persons who may be adversely affected by modifications to the language of an exemption are not otherwise afforded formal notice or opportunity to comment. Thus, OTW’s request for language modifications to the noncommercial video exemption is improper and should be rejected.

Notably, OTW has requested the same alteration to the noncommercial video exemption via renewal petition in three prior rulemaking cycles,⁴ and the Office has declined to adopt OTW’s requested language in each of those cycles.⁵ Most recently, in response to OTW’s substantively identical request in 2023, the Register determined that OTW’s request was properly construed as a “request for an expansion,” not renewal, and recommended declining the expansion.⁶ Despite

¹ See Petition to Renew a Current Exemption Under 17 U.S.C. § 1201, 9th Triennial Rulemaking (August 21, 2026), <https://www.copyright.gov/1201/2027/petitions/renewal/Renewal-Pet-Noncom-Videos-Organization-for-Transformative-Works.pdf>.

² *Id.*, Item C.

³ Exemptions to Permit Circumvention of Access Controls on Copyrighted Works: Notification of Inquiry and Request for Petitions, 91 Fed. Reg. 34,795, 34,797 (June 9, 2026), <https://www.govinfo.gov/content/pkg/FR-2026-06-09/pdf/2026-11545.pdf> (emphases added).

⁴ Petition to Renew a Current Exemption Under 17 U.S.C. § 1201, 9th Triennial Rulemaking (July 6, 2023), <https://www.copyright.gov/1201/2024/petitions/renewal/Renewal%20Pet.%20-%20Noncom.%20Videos%20-%20The%20Organization%20for%20Transformative%20Works.pdf>; Petition to Renew a Current Exemption Under 17 U.S.C. § 1201, 8th Triennial Rulemaking (July 22, 2020), <https://www.copyright.gov/1201/2021/petitions/renewal/Renewal%20Pet.%20-%20Noncom.%20Videos%20-%20Org.%20for%20Transformative%20Works.pdf>; Petition to Renew a Current Exemption Under 17 U.S.C. § 1201, 7th Triennial Rulemaking (July 30, 2017), <https://cdn.loc.gov/copyright/1201/2018/petitions-073117/Renewal%20Pet.%20-%20Noncom.%20Videos%20-%20Org.%20for%20Transformative%20Works.pdf>.

⁵ See 89 Fed. Reg. 85,437, 85,444, 85,446 (Oct. 28, 2024), <https://www.govinfo.gov/content/pkg/FR-2024-10-28/pdf/2024-24563.pdf>; 86 Fed. Reg. 59,627, 59,637 (Oct. 28, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-10-28/pdf/2021-23311.pdf>; 83 Fed. Reg. 54,010, 54,028 (Oct. 26, 2018), <https://www.govinfo.gov/content/pkg/FR-2018-10-26/pdf/2018-23241.pdf>;

⁶ SECTION 1201 RULEMAKING: NINTH TRIENNIAL PROCEEDING RECOMMENDATION OF THE REGISTER OF COPYRIGHTS, 44–45 (2024), https://www.copyright.gov/1201/2024/2024_Section_1201_Registers_Recommendation.pdf.

Submission on behalf of ESA, MPA, and RIAA
Motion Pictures – Noncommercial Videos

this, OTW again claims that its requested change is merely to make the noncommercial video exemption “more understandable,” and that the change would not expand the substantive scope of the exemption. But the Office has already rejected OTW’s argument, deciding that the “availability of the renewal process [depends on] whether the petition proposes **any modification** to the language of the exemption — regardless of the basis for that proposal.”⁷ Because OTW requests such a modification, that aspect of OTW’s petition cannot be considered under the Office’s streamlined renewal procedure.

Accordingly, to the extent the Office recommends renewal of the noncommercial video exemption as currently written, it should deny OTW’s request for changes to the exemption’s current language.

Respectfully submitted,

/s/ Cayman C. Mitchell

Cayman C. Mitchell
JENNER & BLOCK LLP
1155 Avenue of the Americas
New York, NY 10036
Tel: (212) 891-1600
cmitchell@jenner.com

Steven R. Englund
JENNER & BLOCK LLP
1099 New York Ave NW #900
Washington, D.C. 20001
Tel: (202) 649-6000
senglund@jenner.com

⁷ *Id.* at 44 n.212 (emphasis added).