

Exemptions to Prohibition against Circumvention of Technological Measures Protecting Copyrighted Works – Seventh Triennial Section 1201 Final Rule, Effective October 28, 2018

New Exemptions	
<p>Motion pictures (including television shows and videos) for captioning and/or audio description</p> <p>37 CFR §201.40(b)(2)</p>	<p>Details: Allows disability services office or other K-12/college/university unit responsible for accessibility services to students, to circumvent for the purposes of adding <u>captions and/or audio descriptions</u> to create an accessible version as a necessary accommodation for a student under applicable disability law, if:</p> <ol style="list-style-type: none"> 1. The educational institution determines an accessible version cannot be obtained at a fair price or in a timely manner; and 2. Versions are provided to students and stored in a manner intended to reasonably prevent unauthorized further dissemination of the work. <p>Exemption applies to motion pictures on lawfully made and acquired DVDs protected by <i>Content Scramble System</i>, Blu-ray videos protected by <i>Advanced Access Control System</i>, or digital transmissions protected by a technological measure.</p>
<p>Computer programs that enable voice assistant devices to execute lawfully obtained software applications</p> <p>37 CFR §201.40(b)(8)</p>	<p>Details: When circumvention is made solely to enable interoperability between software applications and computer programs on the device or permit removal of software from the device, and is not accomplished for the purpose of gaining unauthorized access to other copyrighted works.</p>
<p>Computer programs contained in and controlling the functioning of lawfully acquired smartphone, home appliance or home system</p> <p>37 CFR §201.40(b)(10)</p>	<p>Details: Where circumvention is a necessary step to allow diagnosis, maintenance, or repair of such device or system and is not accomplished for the purpose of gaining unauthorized access to other copyrighted works.</p>
<p>Lawfully acquired computer programs, except video games, no longer reasonably available in commercial marketplace</p> <p>37 CFR §201.40(b)(13)</p>	<p>Details: When circumvention is solely for the purpose of lawful preservation of a computer program or digital materials dependent upon the program as condition of access, made by an eligible library, archive, or museum and carried out without any purpose of commercial advantage and without distribution outside the physical premises.</p>



This work by The Ohio State University Libraries is licensed under a [Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by/4.0/)

DISCLAIMER: The information in this handout is not legal advice. Copyright Services is not legal counsel to the university or any members of the university community.

Renewed or Expanded Exemptions

Excerpts of motion pictures (including television shows and videos) for criticism or comment

37 CFR §201.40(b)(1)

Details: Applies where circumvention is undertaken using screen-capture technology that enables reproduction of lawfully acquired motion pictures after decryption, or when person engaging in circumvention reasonably believes that non-circumventing alternatives are unable to produce the required level of high-quality content.

Users may circumvent in order to make short portions of the motion picture for **purposes of criticism or comment in:**

1. documentary filmmaking, or other films where the clip is used for parody or for its biographical or historically significant nature;
2. noncommercial videos; or
3. nonfiction multimedia e-books;

Users may circumvent in order to make short portions of the motion picture for **educational purposes:**

1. by college and university faculty and students or K-12 educators and students for the purpose of criticism, comment, teaching, or scholarship;
2. by faculty of MOOCs offered by accredited nonprofit educational institutions (must also meet TEACH Act requirements) in film studies or other courses requiring close analysis of film and media excerpts; or
3. by educators and participants in nonprofit digital and media literacy programs offered by libraries, museums, and other nonprofit entities with an educational mission, in the course of face-to-face instructional activities (*but limited to circumvention using screen-capture technology*).

Exemption applies to motion pictures on lawfully made and acquired DVDs protected by *Content Scramble System*, Blu-ray videos protected by *Advanced Access Control System*, or digital transmissions protected by a technological measure.

Literary works, distributed electronically, with TPM preventing or interfering with assistive technologies

37 CFR §201.40(b)(3)

Details: May circumvent TPM on literary works, distributed electronically, where TPM prevents the enabling of read-aloud functionality or interferes with assistive technologies. If:

1. Copy is lawfully obtained by a blind or other person with a disability and rights holder is appropriately remunerated for the price of a mainstream copy of the work; or
2. Nondramatic literary work is lawfully obtained and used by an authorized entity pursuant to 17 U.S.C. § 121.



This work by The Ohio State University Libraries is licensed under a [Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by/4.0/)

DISCLAIMER: The information in this handout is not legal advice. Copyright Services is not legal counsel to the university or any members of the university community.

<p>Literary works, consisting of compilations of data generated by implanted medical devices</p> <p>37 CFR §201.40(b)(4)</p>	<p>Details: Where circumvention is undertaken by a patient for the sole purpose of lawfully accessing the data generated by the patient’s own device and is accomplished through passive monitoring of wireless transmissions already produced by the implanted device or corresponding personal monitoring system.</p>
<p>Computer programs that enable wireless devices to connect to wireless telecommunications networks</p> <p>37 CFR §201.40(b)(5)</p>	<p>Details: When such connection is authorized by the network operator. Exempt devices include: Exempted devices include:</p> <ul style="list-style-type: none"> • wireless telephone handsets (i.e., cellphones), • all-purpose tablet computers, portable mobile connectivity devices (e.g., mobile hotspots), • removable wireless broadband modems and similar devices, and • wireless devices designed to be worn on the body (e.g., smartwatches).
<p>Computer programs that enable smartphones and portable all-purpose mobile computing devices to execute lawfully obtained software applications</p> <p>37 CFR §201.40(b)(6)</p>	<p>Details: Where circumvention is made solely to enable interoperability between applications with computer programs on the smartphone or device or to permit removal of software from the smartphone or device.</p>
<p>Computer programs to enable smart televisions to execute lawfully obtained software applications</p> <p>37 CFR §201.40(b)(7)</p>	<p>Details: When circumvention is made solely to enable interoperability between software applications and computer programs on the smart television.</p>
<p>Computer programs contained in and controlling the functioning of lawfully acquired motorized land vehicles</p> <p>37 CFR §201.40(b)(9)</p>	<p>Details: Where circumvention is a necessary step to allow diagnosis, repair, or lawful modification of a vehicle function and where circumvention does not constitute a violation of applicable law (including regulations promulgated by the U.S. DOT or EPA), and is not accomplished for the purpose of gaining unauthorized access to other copyrighted works.</p> <p>This exemption does not cover computer programs accessed through a separate subscription service.</p>
<p>Computer programs on lawfully acquired device or machine or computer, computer system, or computer network on which a computer program operates</p> <p>37 CFR §201.40(b)(11)</p>	<p>Details: When circumvention is made solely for the purpose of good-faith security research (accessing solely for purposes of good-faith testing, investigation, and/or correction of a security flaw or vulnerability, in an environment designed to avoid harm to individuals and the public, and where information is used primarily to promote security of devices on which the program operates) and does not violate any applicable law.</p>



This work by The Ohio State University Libraries is licensed under a [Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by/4.0/)

DISCLAIMER: The information in this handout is not legal advice. Copyright Services is not legal counsel to the university or any members of the university community.

<p>Video games in the form of computer programs, lawfully acquired as complete games</p> <p>37 CFR §201.40(b)(12)</p>	<p>Details: When access to an external computer server necessary to facilitate authentication for gameplay is no longer provided, circumvention is permitted for purposes of restoring access:</p> <ol style="list-style-type: none"> 1. For personal, local gameplay; or 2. To allow preservation in a playable format by an eligible library, archive, or museum (including discontinued video games that do not require access to an external computer server for gameplay), where carried out without any purpose of commercial advantage and without distribution outside the physical premises. Includes circumvention of computer programs used to operate video game consoles to engage in preservation activities.
<p>Computer programs that operate 3D printers limiting use of feedstock</p> <p>37 CFR §201.40(b)(14)</p>	<p>Details: When circumvention is solely for purposes of using alternative feedstock and not for accessing design software, design files, or proprietary data.</p>



This work by The Ohio State University Libraries is licensed under a [Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by/4.0/)

DISCLAIMER: The information in this handout is not legal advice. Copyright Services is not legal counsel to the university or any members of the university community.