



LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 201

[Docket No. 2017-10]

Exemptions To Permit Circumvention of Access Controls on Copyrighted Works: Notice of Public Hearings

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Announcement of public hearings.

SUMMARY: The United States Copyright Office will be holding public hearings as part of the seventh triennial rulemaking proceeding under the Digital Millennium Copyright Act (“DMCA”) concerning possible exemptions to the DMCA’s prohibition against circumvention of technological measures that control access to copyrighted works. The public hearings will be held in April 2018 in Washington, D.C. and Los Angeles. Parties interested in testifying at the public hearings are invited to submit requests to testify pursuant to the instructions set forth below.

DATES: The public hearings in Washington, D.C. are scheduled for April 10, 11, 12, and 13, 2018, on each day from 9:00 a.m. to 5:00 p.m. The public hearings in Los Angeles are scheduled for April 23, 24, and 25, 2018, on each day from 9:00 a.m. to 5:00 p.m. Requests to testify must be received no later than 11:59 p.m. Eastern time on February 21, 2018. Although the Office currently anticipates up to four days of hearings in Washington, D.C. and three days of hearings in Los Angeles, the Office may adjust this schedule depending upon the number and nature of requests to testify. Once the

schedule of hearing witnesses is finalized, the Office will notify all participants and post the times and dates of the hearings at <https://www.copyright.gov/1201/2018/>.

ADDRESSES: The Washington, D.C. hearings will be held in the Mumford Room of the James Madison Building of the Library of Congress, 101 Independence Ave. S.E., Washington, D.C. 20540. The Los Angeles hearings will be held in Room 1314 of the UCLA School of Law, 385 Charles E. Young Drive East, Los Angeles, CA 90095.

Requests to testify should be submitted through the request form available at <https://www.copyright.gov/1201/2018/hearing-request.html>. Any person who is unable to send a request via the website should contact the Office using the contact information below to make an alternative arrangement for submission of a request to testify. The **SUPPLEMENTARY INFORMATION** section below includes additional instructions on submitting requests to testify.

FOR FURTHER INFORMATION CONTACT: Sarang Vijay Damle, General Counsel and Associate Register of Copyrights, by email at sdam@loc.gov, Regan A. Smith, Deputy General Counsel, by email at resm@loc.gov, Anna Chauvet, Assistant General Counsel, by email at achau@loc.gov, or Jason E. Sloan, Attorney-Advisor, by email at jslo@loc.gov. Each can be contacted by telephone by calling (202) 707-8350.

SUPPLEMENTARY INFORMATION: On June 30, 2017, the Copyright Office published a notice of inquiry in the Federal Register to initiate the seventh triennial rulemaking proceeding under 17 U.S.C. 1201(a)(1), which provides that the Librarian of Congress, upon recommendation of the Register of Copyrights, may exempt certain classes of copyrighted works from the prohibition against circumventing a technological measure that controls access to a copyrighted work. 82 FR 29804 (June 30, 2017). On

October 26, 2017, the Office published a notice of proposed rulemaking setting forth proposed exemptions for twelve classes of works and requesting responsive comments. 82 FR 49550 (Oct. 26, 2017). The responsive comments received thus far have been posted on the Office's website. See <https://www.copyright.gov/1201/2018/>.

At this time, the Office is announcing public hearings to be held in Washington, D.C. and Los Angeles to further consider the proposed exemptions. The Office plans to convene panels of witnesses for the proposals to be considered, and may combine certain panels if the witnesses and/or key issues substantially overlap. The Office will schedule panels for particular exemptions in either Washington, D.C. or Los Angeles unless compelling circumstances require that a proposed class be considered in both cities. Limiting the discussion of each proposed class to one city or another will better ensure that witnesses can respond to the points made by others and avoid duplicative discussion. All of the hearings will be live streamed online. If no request to testify is received for a proposed exemption, the Office will consider the class based on the written submissions and any *ex-parte* communications with interested parties (discussed below).

A. Submitting Requests To Testify

A request to testify should be submitted to the Copyright Office using the form on the Office's website indicated in the ADDRESSES section above. Anyone wishing to testify with respect to more than one proposed class must submit a separate form for each request. If multiple people from the same organization wish to testify on *different* panels, each should submit a separate request for each panel. If multiple people from the same organization wish to testify on the *same* panel, each should submit a request for that panel, and explain the need for multiple witnesses in the comment field of the request form. If a

party is considering whether to testify at a hearing, the party should submit a hearing request form even if no opposition has been filed. The Copyright Office will contact requesters should it determine that a hearing is unnecessary.

Depending upon the number and nature of the requests to testify, and in light of the limited time and space available for the public hearings, the Office may not be able to accommodate all requests to testify. The Office will give preference to those who have submitted substantive evidentiary submissions in support of or in opposition to a proposal. To the extent feasible, the Office encourages parties with similar interests to select a common representative to testify on their behalf.

All requests to testify must clearly identify:

- The name of the person desiring to serve as a witness.
- The organization or organizations represented, if any.
- Contact information (address, telephone, and email).
- The proposed class about which the person wishes to testify.
- A two- to three-sentence explanation of the testimony the witness expects to present.
- If the party is requesting the ability to demonstrate a use or a technology at the hearing, a description of the demonstration, including whether it will be prepared in advance or presented live, the approximate time required for such demonstration, and any presentation equipment that the person desires to use and/or bring to the hearing.
- The city in which the person prefers to testify (Washington, D.C. or Los Angeles).

The Office will try to take this preference into account in scheduling the hearings, but cannot guarantee that the relevant panel will be convened in the preferred city. Participants who are unable to testify in a particular city or on a particular date should so indicate in the comment field of the request form.

To facilitate the process of scheduling panels, it is essential that all of the required information listed above be included in a request to testify.

Following receipt of the requests to testify, the Office will prepare agendas for the hearings listing the panels and witnesses, which will be circulated to hearing participants and posted at <https://www.copyright.gov/1201/2018/>. As stated above, although the Office currently anticipates up to four days of hearings in Washington, D.C. and three days of hearings in Los Angeles, the Office may adjust this schedule depending upon the number and nature of requests to testify.

B. Format of Public Hearings

There will be time limits for each panel, which will be established after receiving all requests to testify. Generally, the Copyright Office plans to allot approximately one to two hours for each proposed class, although it may allot additional time for more complex classes.

Witnesses should expect the Office to have carefully studied all written comments, and the Office will expect witnesses to have done the same with respect to the classes for which they will be presenting. The hearings will focus on legal or factual issues that are unclear or underdeveloped in the written record, as identified by the Office, as well as demonstrative evidence.

The Office stresses that factual information is critical to the rulemaking process, and witnesses should be prepared to discuss, among other things, where the copies of the works sought to be accessed are stored, how the works would be accessed, and what would be done with the works after being accessed. The Office also encourages witnesses to provide real-world examples to support their arguments. In some cases, the best way to do this may be to provide a demonstration of a claimed noninfringing use or the technologies pertinent to a proposal. As noted above, a person wishing to provide a demonstration should include a request to do so with his or her request to testify, using the appropriate space on the form described above. To ensure proper documentation of the hearings, the Office will require that a copy of any audio, visual, or audiovisual materials that have been prepared in advance (e.g., slideshows and videos) be provided to the Office at the hearing. Live demonstrations may be recorded by a videographer provided by the Office. The Office may contact witnesses individually ahead of time to ensure that demonstrations can be preserved for the record in an appropriate form.

In addition to videography equipment, the Office expects to have a PC, projector, and screen in the hearing room to accommodate demonstrations. Beyond this equipment, witnesses are responsible for supplying and operating any other equipment needed for their demonstrations. Persons planning to bring additional electronic or audiovisual equipment must notify the Office at least five business days in advance of their scheduled hearing date by emailing John Riley, Attorney-Advisor, at jril@loc.gov.

All hearings will be open to the public, but seating will be limited and will be provided on a first-come, first-served basis. Witnesses and persons accompanying

witnesses will be given priority in seating. As noted above, all of the hearings will be live streamed online.

C. Ex-Parte Communication

Typically, the Office's communications with participants about an ongoing rulemaking do not include discussions about the substance of the proceeding apart from written comments and public hearings. As with prior section 1201 rulemakings, the written record may also include post-hearing questions issued by the Office to individual parties involved with a particular class, and the Office will continue to post any questions and responses on the Office's Web site as part of the public record. For this rulemaking, the Office has determined that informal communication with interested parties might also be beneficial, such as to discuss nuances of proposed regulatory language. Any such communication may occur after the public hearings, but before the Office has issued a recommendation to the Librarian of Congress regarding the exemptions. Parties wishing to participate in informal discussions with the Office should submit a written request to one or more of the persons listed in the contact information above.

The primary means to communicate views in the course of the rulemaking will, however, continue to be through the submission of written comments and testimony at the public hearings. In other words, informal communication will supplement, not substitute for, the written record and testimony at the public hearings. Should a party meet with the Office regarding this rulemaking, the participating party will be responsible for submitting a list of attendees and written summary of any oral communication to the Office, which will be made publicly available on the Office's Web site or regulations.gov. In sum, while the Office is establishing the option of informal meetings in this

rulemaking, it will require that all such communications be reflected in the record to ensure the greatest possible transparency.

Dated: January 25, 2018.

Sarang V. Damle,
General Counsel and
Associate Register of Copyrights

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