

**Before the  
United States Copyright Office  
101 Independence Ave. S.E.  
Washington, D.C. 20559-6000**

Section 1201 Study

| Docket No. 2015–8

**ADDITIONAL REPLY COMMENTS OF PUBLIC KNOWLEDGE**

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## **I. Introduction**

Public Knowledge offers these additional reply comments in response to the Copyright Office’s Request for Additional Comments with respect to the Section 1201 Study dated September 27, 2016.<sup>1</sup>

## **II. New Permanent Exemptions**

### ***A. Obsolete Technologies***

We support an exemption addressing obsolescence. In particular, an exemption for the purposes of restoring access to a work, where access is prevented by malfunction, damage, or obsolescence of the format or circumvented technological protection measure. The exemption does not need to define obsolescence in conformance with Section 108(c), as Section 108(c) is intended to define a specific non-infringing use in the particular context of libraries and archives, whereas the contemplated exemption should be available to consumers and end users, for whom the limited definition of obsolescence in Section 108(c) may not be appropriate or applicable.

The exemption should not be limited to only certain classes of works. The history of “obsolete technology” exemptions evidences an array of works covered by the exemption, from “literary works” generally in 2000, to “video games” in 2015. The 2015 exemption is also an example of unnecessarily complex and over-conditioned exemptions. Codified at 37 C.F.R. § 201.40 (b)(8), it is exceeded in length only by the motion picture exemption at § 201.40(b)(1). If made permanent in its present form, such an exemption would offer little relief to users.

## **III. Amending Existing Permanent Exemptions**

### ***A. Reverse Engineering for Interoperability, Encryption Research, and Security Testing***

We support amending the existing permanent exemptions for interoperability, encryption research, and security testing in order to make them useful and reliable for their users. While we do not endorse any specific amending language, we reiterate our position as stated in our earlier comments that permanent exemptions should be crafted broadly to avoid the very trap of limited utility that these exemptions have fallen into, and note that other commenters have provided significant input with respect to this particular aspect of the Office’s inquiry.<sup>2</sup>

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<sup>1</sup> Section 1201 Study: Request for Additional Comments, 81 Fed. Reg. 187 (September 27, 2016), *available at* <https://www.gpo.gov/fdsys/pkg/FR-2016-09-27/pdf/2016-23167.pdf>.

<sup>2</sup> See, e.g. Comments of the Center for Democracy & Technology, October 27, 2016, *available at* <https://www.regulations.gov/document?D=COLC-2015-0012-0110>; Additional Comments of the Electronic Frontier Foundation, October 27, 2016, *available at* <https://www.regulations.gov/document?D=COLC-2015-0012-0118>; and Joint Comments of Rapid7, Bugcrowd, HackerOne, and Luta Security, October 27, 2016, *available at* <https://www.regulations.gov/document?D=COLC-2015-0012-0111>.

#### **IV. Conclusion**

We are likely less than a year away from the commencement of the seventh triennial Section 1201 rulemaking. The Copyright Office now possesses a voluminous record cataloging the burden Section 1201 imposes on the public, consisting of four rounds of public comments and three days of public testimony. We anticipate that any recommendations the Office might make will be closely informed by this record.

Respectfully submitted,  
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