



ISSUE BRIEF: EXEMPTIONS FOR SCHOOLS AND LIBRARIES IN THE ANTI-CIRCUMVENTION PROVISIONS OF THE DIGITAL MILLENNIUM COPYRIGHT ACT

MAY 2020

INTRODUCTION

The Digital Millennium Copyright Act (DMCA) of 1998¹ was enacted to address the increasingly digital nature of copyrighted works. A complex piece of legislation, it is divided into five titles and covers topics such as the creation of safe harbors for internet service providers and the copying of software necessary for maintenance and repair of computers. Title I of the DMCA implements two World Intellectual Property Organization treaties: the Copyright Treaty and the Performances and Phonograms Treaty. Article 11 of the Copyright Treaty contains a provision that requires Contracting Parties to provide “adequate legal protection and effective legal remedies against the circumvention of effective technological measures” that are used by authors to protect their rights in their copyrighted works.² This prohibition against circumvention has been codified at 17 U.S.C. § 1201(a)(1)(A). The DMCA goes further and prohibits not only the circumvention of technological protection measures, but also the manufacturing or trafficking in technology that is designed to circumvent measures that control access to protected works.⁴

The anti-circumvention provision is not absolute, with exemptions listed in both the statute and related regulations.⁵ These exemptions describe the types of works whose technical protection measures may be circumvented and the purposes for which the works may be used. This issue brief discusses the exemptions that apply to educational institutions and libraries.

STATUTORY EXEMPTIONS

Section 1201 contains one exemption, subsection (d), which explicitly applies to educational institutions and libraries, and another exemption, subsection (g), which could be applicable to educational institutions.

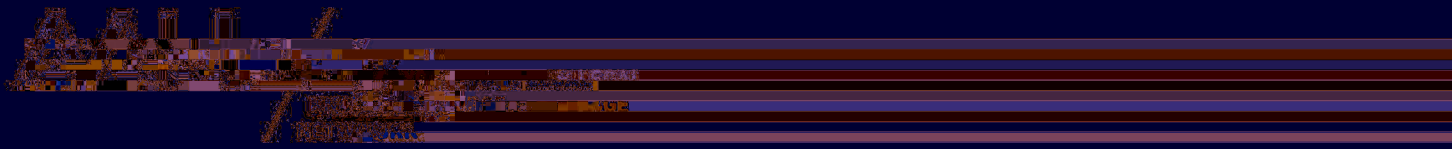
¹ P.L. 105-304, 112 Stat. 2860 (1998).

² WIPO Copyright Treaty, Dec. 20, 1996, art. 11.

³ 17 U.S.C. § 1201(a)(1)(A) reads in part: “No person shall circumvent a technological measure that effectively controls access to a work protected under this title.”

⁴ 17 U.S.C. § 1201(a)(2).

⁵ Exemptions are listed in 17 U.S.C. § 1201(d)-(j) and § 1201(a)(1)(B).



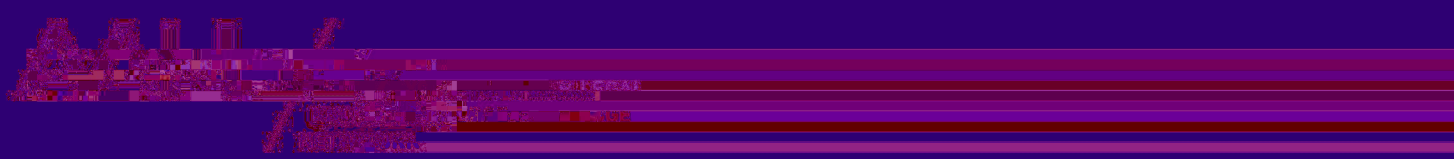
Subsection (d) allows nonprofit libraries, archives, and educational institutions to circumvent a protection measure on a commercially exploited copyrighted work to determine whether to acquire a copy of the work. The work m



EXEMPTIONS THAT APPLY TO EDUCATIONAL INSTITUTIONS

First, college and university faculty and students and K-12 educators and students may circumvent protection measures to access portions of motion pictures for the purpose of criticism, comment, teaching, or scholarship.⁸ This exemption also applies to faculty of massive open online courses (MOOCs) offered by accredited nonprofit educational institutions in film studies or other courses requiring close analysis of film and media excerpts, for the purpose of criticism or comment.⁹

A second educational exemption applies to motion pictures (including television shows and videos) where circumvention is undertaken by the disability services office of a K-12 school, college, or university for the purpose of adding captioDC 01 8 (w)-6 (h)-2 (e)tca9s4 (or)-rb-de-



faith testing, investigation, or correction of a security flaw or vulnerability. ¹⁶The information derived from the activity must be used primarily to promote the security or safety of the class of devices or machine