

## SECTION 1201 OF TITLE 17

# A Legal Overview of Section 1201

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Welcome to the United States Copyright Office’s informational video on section 1201 of title 17 of the United States Code.

This video will give you an overview of section 1201, including what access and copy controls are, what Section 1201’s circumvention and trafficking rules prohibit, what permanent and temporary exemptions are available to those prohibitions, and what is the rulemaking process for temporary exemptions.

Other videos discuss the rulemaking and renewal process in depth.

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Section 1201 of title 17 is part of the Digital Millennium Copyright Act, often called the “DMCA,” which Congress enacted to further the growth of the digital marketplace. It encourages copyright owners to provide greater access to their works in digital formats by providing them with legal protections against unauthorized access to their works.

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Section 1201 prohibits two types of activities. First, it prohibits “circumventing a technological measure,” often called a technological protection measure or “TPM.” To circumvent a TPM means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a TPM, without the authority of the copyright owner. Second, it prohibits “trafficking” in certain circumvention technologies, including manufacturing, importing, offering to the public, providing, or otherwise trafficking in certain circumvention technologies, products, services, devices, or components.

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As we talk about Section 1201, it is important to be familiar with the two different types of TPMs covered by the statute. First, “access controls” are technological measures that, as their name suggests, prevent unauthorized access to copyrighted works. Second, “copy controls” are technological measures

that protect the exclusive rights granted to copyright owners under title 17, such as the right to reproduce a work or perform the copyrighted work publically.

Note that in some cases a single technological measure will protect against both accessing and copying a copyrighted work. For example, the TPM that protects DVDs prevents users from both accessing and copying the work.

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Section 1201(a)(1)(A) prohibits circumvention of an access control. For example, it prohibits decrypting a Blu-Ray disc so that you can access it on an unauthorized device or bypassing the password protection on a music streaming service.

Note that the law does not prohibit circumvention of a copy control; but acts taken after circumvention may constitute copyright infringement. This prohibition is subject to certain permanent exemptions (via the statute) and temporary exemptions (via a rulemaking), both discussed later.

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Section 1201 also prohibits people from trafficking in devices, software, or other technologies that can be used to circumvent either access controls or copy controls. This prohibition is subject to certain permanent, statutory exemptions; but the Section 1201 Rulemaking cannot grant exemptions to the trafficking prohibitions. Only an act of Congress can grant new exemptions to these prohibitions.

In short, unless a permanent, statutory exemptions applies, you cannot traffic in an access control or a copy control.

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To summarize, section 1201 generally prohibits trafficking in technologies used to circumvent either access or copy controls. Section 1201 also generally prohibits circumventing access controls, but does not prohibit circumventing copy controls. But if someone circumvented a copy control to reproduce a work, that act may constitute copyright infringement.

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There are two ways to benefit from an exemption (or exception) to the prohibition against circumvention. The first way is to use one of the permanent exemptions, found in the law already. You can find these exemptions in section 1201(d) through (j) of title 17. It is important to note that the permanent exemptions apply only to the specific circumstances as defined in the statute. The exemptions cover circumstances involving: nonprofit libraries, archives, and educational institutions; law enforcement, intelligence, and other government activities; reverse engineering; encryption research; exceptions regarding minors; protection of personally identifying information; and security testing. A few of these exemptions also allow some trafficking in access and copy controls.

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The second way to benefit from an exemption is by requesting a temporary exemption. These exemptions are created through a rulemaking that takes place every three years, and take a little over a year to complete. Three government agencies take part in the exemption process. The Copyright Office conducts a public rulemaking and drafts recommendations to the Librarian after consulting with the National Telecommunications and Information Administration, or NTIA within the Department of Commerce. NTIA consults with Copyright Office during the rulemaking. Finally, the Librarian of Congress adopts a final rule containing the exemptions.

Information on current temporary exemptions can be found on the Copyright Office website at [www.copyright.gov/1201](http://www.copyright.gov/1201).

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If you want to circumvent the TPM protecting a copyrighted work, consider the following steps. First, ask does the TPM protect only against unauthorized copying or other infringements? If the answer is yes, then no exemption is needed. But consider whether your action would constitute copyright infringement. Also, remember that TPMs are often used to protect against both copying and accessing the work. If the TPM is protecting an access control, next consider whether a permanent exemption applies.

Though these exemptions are specific to the circumstances as defined by the statute, if your use is consistent with those permissions and restrictions, you are free to circumvent the TPM. If a permanent exemption does not apply, consider whether an existing temporary exemption covers your need.

If it does, then you can circumvent the TPM for the term of the temporary exemption, consistent with the permissions and restrictions found in the regulations.

Finally, if no permanent or existing temporary exemption applies, consider requesting a new temporary exemption in the next triennial rulemaking.

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Announcements for the triennial rulemaking will be posted in the Federal Register, in the Copyright Office's email notification system, called NewsNet, and on the Copyright Office's section 1201 webpage.

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The United States Copyright Office is providing general information about section 1201 of the Copyright Act and its rulemaking proceeding.

By law, the Office cannot provide legal advice to the public.