D of the Accomplishment Instructions in Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0289, Revision 1, dated January 11, 2011.

(2) If false in-flight BAG DOOR indications have not occurred, within 165 hours TIS after the effective date of this AD or within the next 60 days after the effective date of this AD, whichever occurs first, do the following actions:

(i) Inspect the baggage door and the baggage door locking mechanism and do the necessary corrective actions following Parts A and B of the Accomplishment Instructions in Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0289, Revision 1, dated January 11, 2011.

(ii) If after the inspection required by paragraph (f)(2)(i) of this AD, the baggage door adjustment procedure was not required or was required and was done successfully, inspect the screws on the locking device on the door handle with the proper tightness. Take any necessary corrective actions after applying a thread locker following Part D of the Accomplishment Instructions in Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0289, Revision 1, dated January 11, 2011.

(iii) If after the inspection required by paragraph (f)(2)(i) of this AD, the baggage door adjustment was required and was not done successfully, within the next 165 hours TIS after the effective date of this AD or within the next 60 days after the effective date of this AD, whichever occurs first, do the following actions:

(A) Modify the locking mechanism following the Accomplishment Instructions in Piaggio Aero Industries S.p.A. Service Bulletin No. 80–0223, Revision 1, dated July 31, 2009.

(B) Inspect the screws on the locking device installed on the door handle for proper tightness and correct as necessary after applying a thread locker following Part D of the Accomplishment Instructions in Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0289, Revision 1, dated January 11, 2011.

(3) If the inspections specified in Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0289, dated November 11, 2010, and the modification, if required, specified in Piaggio Aero Industries S.p.A. Service Bulletin No. 80–0223, Revision 1, dated July 31, 2009, were done before the effective date of this AD, we will allow ''unless already done'' credit to comply with the actions required in this AD. After the effective date of this AD, you must use Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0289, Revision 1, dated January 11, 2011, to comply with this AD.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; e-mail: *mike.kiesov@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, a Federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2011–0132, dated July 12, 2011; Piaggio Aero Industries S.p.A. Service Bulletin No. 80–0223, Revision 1, dated July 31, 2009; Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0289, dated November 11, 2010; and Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0289, Revision 1, dated January 11, 2011, for related information. For service information related to this AD, contact Piaggio Aero Industries S.p.A–Airworthiness Office, Via Luigi Cibrario, 4–16154 Genova-Italy; phone: +39 010 6481353; fax: +39 010 6481881; e-mail: *airworthiness@piaggioaero.it;* Internet: *http://www.piaggioaero.com/#/en/after-sales/service-support.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri on September 20, 2011.

Wes Ryan,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–25006 Filed 9–28–11; 8:45 am]

BILLING CODE 4910–13–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2011–7]

Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of inquiry and request for comments.

SUMMARY: The United States Copyright Office is preparing to conduct proceedings in accordance with provisions added by the Digital Millennium Copyright Act which provide that the Librarian of Congress, upon the recommendation of the Register of Copyrights, may exempt certain classes of works from the prohibition against circumvention of technological measures that control access to copyrighted works. The purpose of this rulemaking proceeding is to determine whether there are particular classes of works as to which users are, or are likely to be, adversely affected in their ability to make noninfringing uses due to the prohibition on circumvention. This notice requests written comments from all interested parties, including representatives of copyright owners, educational institutions, libraries and archives, scholars, researchers and members of the public, in order to elicit evidence on whether noninfringing uses of certain classes of works are, or are likely to be, adversely affected by this prohibition on the circumvention of measures that control access to copyrighted works.

DATES: Written comments must be received no later than December 1, 2011. A notice of proposed rulemaking will be published in December 2011 that will identify proposed classes of works and solicit comments on those proposed classes, which will be no later than February 15, 2012.

ADDRESSES: The Copyright Office strongly prefers that comments be submitted electronically. A comment

page containing a comment form will be posted on the Copyright Office Web site at *http://www.copyright.gov/1201/comment-forms.* The online form contains fields for required information including the name and organization of the commenter, as applicable, and the ability to upload comments as an attachment. To meet accessibility standards, all comments must be uploaded in a single file in either the Adobe Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The maximum file size is 6 megabytes (MB). The name of the submitter and organization should appear on both the form and the face of the comments. All comments will be posted publicly on the Copyright Office Web site exactly as they are received, along with names and organizations. If electronic submission of comments is not feasible, please contact the Copyright Office at 202–707–8380 for special instructions. *See* **SUPPLEMENTARY INFORMATION** section for information about requirements and formats of submissions.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, Copyright GC/I&R, PO Box 70400, Washington, DC 20024–0400. Telephone: (202) 707–8380; telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: The United States Copyright Office announces the initiation of a rulemaking to determine whether there are any classes of copyrighted works for which noninfringing uses are, or in the next three years are likely to be, adversely affected by the prohibition on circumvention of technological measures that control access to copyrighted works. *See* 17 U.S.C. 1201(a)(1)(C).

1. Mandate for Rulemaking Proceeding

The Digital Millennium Copyright Act, Public Law 105–304 (1998), amended title 17 of the United States Code to add Chapter 12, which among other things prohibits circumvention of access control technologies employed by or on behalf of copyright owners to protect their works. Specifically, subsection 1201(a)(1)(A) provides, *inter alia,* that ''No person shall circumvent a technological measure that effectively controls access to a work protected under this title.''

Subparagraph (B) limits this prohibition. It provides that prohibition against circumvention ''shall not apply to persons who are users of a copyrighted work which is in a particular class of works, if such persons are, or are likely to be in the succeeding 3-year period, adversely affected by virtue of such prohibition in their ability to make noninfringing uses of that particular class of works under this title'' as determined in this rulemaking.

Subparagraph (C) provides that every three years, the Librarian of Congress, upon the recommendation of the Register of Copyrights (who is to consult with the Assistant Secretary for Communications and Information of the Department of Commerce) must ''make the determination in a rulemaking proceeding for purposes of subparagraph (B) of whether persons who are users of a copyrighted work are, or are likely to be in the succeeding 3-year period, adversely affected by the prohibition under subparagraph (A) in their ability to make noninfringing uses under this title of a particular class of copyrighted works.'' The Librarian, on the recommendation of the Register, has thus far made four such determinations. This notice announces the commencement of the fifth rulemaking proceeding under section 1201(a)(1)(C).

The exemptions promulgated by the Librarian in the first rulemaking were in effect for the 3-year period from October 28, 2000, through October 28, 2003. *See Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies,* 65 FR 64556, 64564, published in the Federal Register October 27, 2000 (hereinafter Final Reg. 2000). On October 28, 2003, the Librarian of Congress published the second determination as to classes of works to be exempted from the prohibition. *Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies,* 68 FR 62011, 62013, published in the Federal Register October 31, 2003 (hereinafter Final Reg. 2003). The four exemptions created in the second anticircumvention rulemaking remained in effect for a 3-year period. On November 27, 2006, the Librarian of Congress published the third determination. *Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies,* 71 FR 68472, 68480, published in the **Federal Register** November 27, 2006 (hereinafter Final Reg. 2006). The six exemptions established in the third anticircumvention rulemaking remained in effect until August 6, 2010. On August 6, 2010, the Librarian of Congress published the fourth determination, which will remain in effect until the conclusion of the next rulemaking. *Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies,* 75 FR 47464, published in the **Federal Register** August 6, 2010 (hereinafter Final Reg. 2010). All four of the previous determinations by the Librarian of Congress were made upon the recommendation of the Register of Copyrights following extensive rulemaking proceedings.

2. Background

Title I of the Digital Millennium Copyright Act was, *inter alia,* the congressional fulfillment of obligations of the United States under the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. For additional information on the historical background and the legislative history of Title I, *see Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies,* 64 FR 66139, 66140 (1999) [*http://www.loc.gov/copyright/fedreg/1999/64fr66139.html*].

Section 1201 of title 17 of the United States Code prohibits two general types of activity: (1) The conduct of ''circumvention'' of technological protection measures that control access to copyrighted works and (2) trafficking in any technology, product, service, device, component, or part thereof that protects either ''access'' to a copyrighted work or that protects the ''rights of the copyright owner,'' if that device or service meets one of three conditions. The first type of activity, the conduct of circumvention, is prohibited in section 1201(a)(1). The latter activities, trafficking in devices or services that circumvent ''access'' or ''the rights of the copyright owner,'' are contained in sections 1201(a)(2) and 1201(b) respectively. In addition to these prohibitions, section 1201 also includes a series of section-specific limitations and exemptions to the prohibitions of section 1201.

A. The Anticircumvention Provision at Issue

Subsection 1201(a)(1) applies when a person who is not authorized by the copyright owner to gain access to a work does so by circumventing a technological measure put in place with the authority of the copyright owner to control access to the work. *See Report of the House Committee on Commerce on the Digital Millennium Copyright Act of 1998,* H.R. Rep. No. 105–551, pt. 2, at 36 (1998) (hereinafter Commerce Comm. Report).

That section provides that ''No person shall circumvent a technological

measure that effectively controls access to a work protected under this title.'' 17 U.S.C. 1201(a)(1)(A) (1998).

The relevant terms are defined:

(3) As used in this subsection—

(A) to ''circumvent a technological measure'' means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner; and

(B) a technological measure ''effectively controls access to a work'' if the measure, in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work. 17 U.S.C. 1201(a)(3).

B. Scope of the Rulemaking

The statutory focus of this rulemaking is limited to one subsection of section 1201: the prohibition on the conduct of circumvention of technological measures that control access to copyrighted works. 17 U.S.C. 1201(a)(1)(C) [*http://www.copyright.gov/title17/92chap12.html#1201*]. The Librarian of Congress has no authority to limit either of the anti-trafficking provisions contained in subsections 1201(a)(2) or 1201(b). 17 U.S.C. 1201(a)(1)(E). Moreover, for a proposed exemption to be considered in this rulemaking, there must be a causal connection between the prohibition in 1201(a)(1) and the adverse effect on noninfringing uses.

This rulemaking addresses only the prohibition on the conduct of circumventing measures that control ''access'' to copyrighted works, *e.g.,* decryption or hacking of access controls such as passwords or serial numbers. The structure of section 1201 is such that there exists no comparable prohibition on the conduct of circumventing technological measures that protect the ''rights of the copyright owner,'' *e.g.,* the section 106 rights to reproduce, adapt, distribute, publicly perform, or publicly display a work. Circumventing a technological measure that protects these section 106 rights of the copyright owner is governed not by section 1201, but rather by the traditional copyright rights and the applicable limitations in the Copyright Act. For example, if a person having lawful access to a work circumvents a measure that prohibits printing or saving an electronic copy of an article, there is no provision in section 1201 that precludes this activity. Instead, it would be actionable as copyright infringement of the section 106 right of reproduction unless an applicable limitation applied, *e.g.,* fair use. The trafficking in, *inter alia,* any device or service that enabled others to circumvent such a technological protection measure may, however, be actionable under section 1201(b).

On the other hand, because there is a prohibition on the act of circumventing a technological measure that controls access to a work, and since traditional Copyright Act limitations are not defenses to the act of circumventing a technological measure that controls access, Congress chose to create the current rulemaking proceeding as a ''fail-safe mechanism'' to monitor the effect of the anticircumvention provision in section 1201(a)(1)(A). Commerce Comm. Report, at 36. This anticircumvention rulemaking is authorized to monitor the effect of the prohibition against ''access'' circumvention on noninfringing uses of copyrighted works. In this triennial rulemaking proceeding, effects on noninfringing uses that are unrelated to section 1201(a)(1)(A) may not be considered. 17 U.S.C. 1201(a)(1)(C).

C. Burden of Proof

In the first rulemaking, the Register concluded from the language of the statute and the legislative history that a determination to exempt a class of works from the prohibition on circumvention must be based on a showing that the prohibition has or is likely to have a substantial adverse effect on noninfringing uses of a particular class of works. (The meaning of the phrase ''class of works'' is described in section E of this Notice of Inquiry.) It was determined that proponents of an exemption bear the burden of proof that an exemption is warranted for a particular class of works and that the prohibition is presumed to apply to all classes of works unless an adverse impact has been shown. *See* Commerce Comm. Report, at 37 and *see also,* Final Reg. 2000, 65 FR at 64558.

The ''substantial'' adverse effect requirement has also been described as a requirement that the proponent of an exemption must demonstrate ''distinct, verifiable, and measurable impacts,'' and more than ''*de minimis* impacts.'' *See* Final Reg. 2003, 68 FR at 62013. Whatever label one uses, proponents of an exemption bear the burden of providing sufficient evidence under this standard to support an exemption. How much evidence is sufficient will vary with the factual context of the alleged harm. Further, proof of harm is never the only consideration in the rulemaking process, and therefore the sufficiency of the evidence of harm will always be relative to other considerations, such as, the availability of the affected works for use, the availability of the works for nonprofit archival, preservation, and educational purposes, the impact that the prohibition has on criticism, comment, news reporting, teaching, scholarship, or research, the effect of circumvention on the market for or value of copyrighted works, and any other relevant factors.

In order to meet the burden of proof, proponents of an exemption must provide evidence either that actual harm currently exists or that it is ''likely'' to occur in the ensuing 3-year period. Actual instances of verifiable problems occurring in the marketplace are generally necessary in order to prove actual harm. The most compelling cases of actual harm will be based on first-hand knowledge of such problems. Circumstantial evidence may also support a claim of present or likely harm, but such evidence must also reasonably demonstrate that a measure protecting access was the cause of the harm and that the adversely affected use was, in fact, noninfringing. ''Likely'' adverse effects may also support an exemption. This standard of ''likelihood'' requires proof that adverse effects are more likely than not to occur. Claims based on ''likely'' adverse effects cannot be supported by speculation alone. *See Staff of House Committee on the Judiciary, 105th Cong., Section-by-Section Analysis of H.R. 2281* as Passed by the United States House of Representatives on August 4, 1998, (hereinafter House Manager's Report), at 6, (an exemption based on ''likely'' future adverse impacts during the applicable period should only be made ''in extraordinary circumstances in which the evidence of likelihood is highly specific, strong and persuasive.''). Conjecture alone is insufficient to support a finding of ''likely'' adverse effect. Final Reg. 2000, 65 FR at 64559. Although a showing of ''likely'' adverse impact will necessarily involve prediction, the burden of proving that the expected adverse effect is more likely than other possible outcomes rests firmly on the proponent of the exemption.

The identification of existing or likely problems is not, however, the end of the analysis. In order for an exemption of a particular class of works to be warranted, a proponent must show that such problems justify an exemption in light of all of the relevant facts. The identification of isolated or anecdotal problems will be generally insufficient to warrant an exemption. Similarly, the mere fact that the digital format would be more convenient to use for

noninfringing purposes is generally insufficient factual support for an exemption. Further, purely theoretical critiques of section 1201 cannot satisfy the requisite showing. House Manager's Report, at 6. Proponents of exemptions must show sufficient harm to warrant an exemption from the default rule established by Congress—the prohibition against circumvention.

There is a presumption that the section 1201 prohibition will apply to any and all classes of works, including previously exempted classes, unless a new showing is made that an exemption is warranted. Final Reg. 2000, 65 FR at 64558. Exemptions are reviewed de novo and prior exemptions will expire unless sufficient new evidence is presented in each rulemaking that the prohibition has or is likely to have an adverse effect on noninfringing uses. The facts and argument that supported an exemption during any given 3-year period may be insufficient within the context of the marketplace in a different 3-year period. Similarly, proposals that were not found to justify an exemption in any particular rulemaking could find factual support in the context and on the record of another rulemaking.

Evidence in support or in opposition to an exemption should be contained in the initial comments or, after publication of the proposed classes in the **Federal Register**, in the comments on the proposed exemptions. The purpose of this rulemaking is to survey interested parties in the digital environment to discover whether section 1201(a)(1) is adversely affecting noninfringing uses of particular classes of copyrighted works. The proposals received in the initial comments will frame the inquiry throughout the rest of the rulemaking process. The comments submitted in response to this Notice of Inquiry will be posted on the Copyright Office Web site shortly after submission, and a Notice of Proposed Rulemaking identifying the classes of works proposed will be published in the **Federal Register** shortly thereafter.[1] The Notice of Proposed Rulemaking will invite copyright owners and other interested parties to offer their comments in support of or opposition to the proposed classes. Comments responsive to the proposed classes may also propose modest refinements to the proposed classes and supply additional evidence, but may not propose completely new classes of works. Since opponents to exemptions have only one comment period to provide written responses to the exemptions proposed, opponents should have sufficient notice of the exemptions to be addressed in the rulemaking. Copyright owners and other interested parties, however, should be vigilant in monitoring classes proposed in the initial comment period that may implicate their interests as such classes may be further refined in the ensuing rulemaking process.

The Office will post all of the comments, hearing transcripts, and other relevant material in this rulemaking proceeding, as the Office has done since the inception of this rulemaking proceeding, on the Copyright Office's Web site at: *http://www.copyright.gov/1201*.[2]

The Copyright Office will also conduct a series of hearings on the proposed exemptions in the Spring, in Washington DC and possibly in California. These hearings will offer proponents and opponents of exemptions an opportunity to present arguments and answer questions from the Register and her staff. These hearings—the time, date and subject matter of which will be announced early in 2012—will not provide a forum in which to raise new proposals or to submit wholly new evidence. Evidence that demonstrates how a technological measure operates and affects noninfringing uses as well as evidence that is responsive to earlier disputes raised in the comment process is welcomed, and is encouraged, at these hearings. However, the hearings may not be used as a vehicle for surprise or to present untimely proposals.

The Register is also likely to pose post-hearing questions to specific parties or witnesses that participated in the rulemaking proceeding. These questions have historically sought clarification of legal and factual questions, including specific requests to explain the operation of a technological measure at issue. Such post-hearing questions should not be construed as a general public post-hearing comment phase—there simply will not be sufficient time to consider another round of general public comments before the announcement of the newly exempted classes—but rather are invitations addressed to specific witnesses who have offered testimony on an issue to provide further clarification in response to specific questions from the Register. The questions and the responses to the questions will be posted on the Copyright Office's website after the responses have been received.

D. Availability of Works in Unprotected Formats

Other statutory considerations must also be balanced with evidence of adverse effects attributable to the prohibition. In making her recommendation to the Librarian, the Register is instructed to consider the availability for use of copyrighted works. 17 U.S.C. 1201(a)(1)(C)(i). This inquiry demands that the Register consider whether ''works'' protected by technological measures that control access are also available in the marketplace in formats that are unprotected. The fact that a ''work'' (in contrast to a particular ''copy'' of a work) is available in a format without technological protection measures may be significant because the unprotected formats might allow the public to make noninfringing uses of the work even though other formats of the work would not. For example, in the first rulemaking, many users claimed that the technological measures on motion pictures contained on Digital Versatile Disks (DVDs) restricted noninfringing uses of the motion pictures. A balancing consideration was that the record revealed at that time that the vast majority of these works were also available in analog format on VHS tapes. Final Reg. 2000, 65 FR at 64568. Thus, the full range of availability of a work for use is necessary to consider in assessing the need for an exemption to the prohibition on circumvention.

Another consideration relating to the availability for use of copyrighted works is whether the measure supports a distribution model that benefits the public generally. For example, while a measure may limit the length of time that a work may be accessed (time-limited) or may limit the scope of access (scope-limited), *e.g.,* access to only a portion of work, those limitations may benefit the public by providing ''use-facilitating'' models that allow users to obtain access to works at a lower cost than they would otherwise be charged were such restrictions not in place. If there is sufficient evidence that particular classes of works would not be offered at all without the protection afforded by technological protection measures that control access, this evidence must be considered. House Manager's Report, at 6. Accord, Final Reg. 2000, 65 FR at 64559. Thus, the Register's inquiry must assess any benefits to the public resulting from the

[1] *See infra* for a discussion of proposals raised after the initial comment period has expired.

[2] If a comment includes attached material that appears to be protected by copyright and there is no indication that the material was attached with permission of the copyright owner, the attached material will not be placed on the Office's Website. If such a material is available on the Internet, the comment should identify where the material may be found.

prohibition as well as the adverse effects that may be established.

E. The Scope of the Term ''Class of Works''

Section 1201 does not define a critical term for the rulemaking process: a ''class of works.'' With respect to this issue and others, commenters should familiarize themselves with the Register's recommendation and the Librarian's determination in the first rulemaking and in the subsequent three rulemakings, since many of the issues which were unsettled at the start of the first rulemaking have been addressed and developed in the four determinations. While the approach taken in resolving the issues raised in these rulemakings may continue to develop in this and subsequent proceedings, interested parties should assume that the standards developed thus far will continue to apply in the current proceeding. Of course, commenters may argue for adoption of alternative approaches,[3] but a persuasive case will have to be made to warrant reconsideration of previous decisions regarding interpretation of section 1201.

In the first rulemaking, the Register elicited views on the scope and meaning of the term ''class of works.'' After review of the statutory language, the legislative history and the extensive record in the proceeding [*see* Final Reg., 65 FR at 64557 for a description of the record in the last rulemaking proceeding], the Register reached certain conclusions on the scope of this term. [For a more detailed discussion, *see* Final Reg., 65 FR at 64559.]

The Register found that the statutory language required that the Librarian identify a ''class of works'' primarily based upon attributes of the works themselves, and not by reference to some external criteria such as the intended use or the users of the works. The phrase ''class of works'' connotes that the shared, common attributes of the ''class'' relate to the nature of authorship in the ''works.'' Thus a ''class of works'' was intended to be a ''narrow and focused subset of the broad categories of works of authorship * * * identified in section 102.'' Commerce Comm. Report, at 38. The starting point for a proposed exemption of a particular class of works must be the section 102 categories of authorship: literary works; musical works; dramatic works; pantomimes and choreographic works; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; and architectural works.

This determination is supported by the House Manager's Report which discussed the importance of appropriately defining the proper scope of the exemption. House Manager's Report, at 7. The legislative history stated that it would be highly unlikely for all literary works to be adversely affected by the prohibition and therefore, determining an appropriate subcategory of the works in this category would be the goal of the rulemaking. *Id.*

Therefore, the Register concluded that the starting point for identifying a particular ''class of works'' to be exempted must be one of the section 102 categories. Final Reg., 65 FR at 64559–64561. From that starting point, it is likely that the scope or boundaries of a particular class would need to be further limited to remedy the particular harm to noninfringing uses identified in the rulemaking.

In the first anticircumvention rulemaking, the Register recommended and the Librarian agreed that two classes of works should be exempted:

(1) Compilations consisting of lists of websites blocked by filtering software applications; and

(2) Literary works, including computer programs and databases, protected by access control mechanisms that fail to permit access because of malfunction, damage or obsoleteness.

While the first class exempted fits comfortably within the approach to classification discussed above, the second class includes the entire category of literary works, but narrows the exemption by reference to attributes of the technological measures that controls access to the works.

In the 2006 rulemaking, the Register determined that a further refinement of the approach to determining a particular class of works was warranted. Even though a class must begin, as its starting point, by reference to one of the categories of authorship enumerated in section 102 of the Copyright Act (or some subset thereof), that class should be further tailored to address the harm (actual or likely) alleged. The proper tailoring of a class will depend on the specific facts, but in some cases, the most appropriate manner of further tailoring the category or sub-category may be to limit the class in relation to particular uses or users.

The impetus for this refinement was a proposed exemption for film and media studies professors. The proponents of the exemption demonstrated that the reproduction and public performance of short portions of motion pictures or other audiovisual works in the course of face-to-face teaching activities of a film or media studies course would generally constitute a noninfringing use. The proponents further demonstrated that the digital version of the motion pictures distributed on DVDs was not merely a preferred format, but that the digital version of these works was the only version of the work that met the pedagogical needs of the film and media studies professors. The proponents of the exemption also demonstrated that their otherwise noninfringing uses of the digital versions of these motion pictures were adversely affected by the prohibition on circumvention of technological measures protecting access to these works, because the Content Scrambling System (CSS) contained on most commercially released DVDs was an access control system that prevented the making of a compilation of film clips for classroom use. Although opponents of the exemption demonstrated a DVD player that was alleged to meet the pedagogical needs of educators, the device presented obstacles for classroom use that were found to be more than a mere inconvenience for a subset of users—film and media studies professors.

The proponents met their burden of proving that section 1201(a)(1) was adversely affecting film and media studies educators' ability to engage in noninfringing uses for the ensuing 3-year period and that no reasonable substitute for the pedagogically beneficial digital content was available or likely to become available in the next three years. The opponents of the proposal expressed concern that if the proposed class of works—audiovisual works included in the educational library of a college or university's film or media studies department and that are protected by technological measures that prevent their educational use—was based only on attributes of the work itself, the exemption would necessarily exempt a much broader range of uses than those in which the film professors wished to engage. Moreover, copyright owners were concerned that such an exemption would create public confusion about the circumstances in which circumvention was appropriate. Given the expanse of such a class of works and the adverse effects that could occur as a result of confusion about the class, copyright owners argued that overall harm of such an exemption would outweigh the marginal benefits to this subset of educators.

[3] Proponents of an exemption may do so in their comments proposing exemptions. Opponents of an exemption should do so in their comments filed in response to the forthcoming Notice of Proposed Rulemaking.

The Register concluded that a further refinement of the scope of a class of works was the proper balance to the valid concerns of both educators and copyright owners. By delineating the class in relation to the relevant noninfringing use proven to be, or likely to be, adversely affected by the prohibition on circumvention, film and media studies educators' needs could be met while leaving the statutory prohibition against circumvention intact for that class with respect to other uses. In the fourth rulemaking concluded in 2010, similar refinements were made to certain classes of works. *See* 37 CFR 201.40(b)(1), (2), (3), and (4).

In all proposed exemptions, the starting point for a class of works must be a section 102 category of authorship, or a subset thereof. That category or subset should then be tailored by other criteria as appropriate under the particular facts presented. The goal is to fashion an exemption that is neither too narrow nor too broad to remedially address the evidence of present and likely harm. An appropriately fashioned exemption will assist users and copyright owners alike, by temporarily suspending the prohibition on circumvention for appropriately tailored adversely affected classes, while preserving the prohibition in all other classes.

The exemptions published for each three-year period are temporary and expire when the succeeding determination of the Librarian of Congress is published. This rulemaking will examine adverse effects existing in the marketplace or likely to exist in the next three-year period to determine whether any exemptions to the prohibition on circumvention of technological protection measures that effectively control access to copyrighted works are warranted by the evidence raised during this rulemaking.

F. Considerations To Address Within a Comment

This notice requests written comments from all interested parties wishing to propose a class of works for exemption from the prohibition on circumvention. In addition to the necessary showing discussed above, in order to make a prima facie case for a proposed exemption, certain critical points should be established. First, a proponent should identify the technological measure that is the ultimate source of the alleged problem, and the proponent should explain how the technological measure effectively controls access to a copyrighted work. Second, a proponent must specifically explain what noninfringing activity the prohibition on circumvention is preventing. In addition to describing the activity, the proponent should provide a factual basis for a determination that the technological measure has had or is likely to have a substantial adverse effect on noninfringing uses; demonstrating only isolated instances of relatively minimal adverse effects is not likely to meet the proponent's burden. Third, a proponent should establish that the prevented activity is, in fact, a noninfringing use under current law. A proponent should also demonstrate why the access-protected copy of a work is needed for the noninfringing use and why alternate means of engaging in the noninfringing uses (including use of available copies of the work in unprotected formats), if they exist, are an insufficient substitute for accomplishing the noninfringing use.

The nature of the Librarian's inquiry is further delineated by the statutory areas to be examined by the Register of Copyrights:

(i) The availability for use of copyrighted works;

(ii) the availability for use of works for nonprofit archival, preservation, and educational purposes;

(iii) the impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research;

(iv) the effect of circumvention of technological measures on the market for or value of copyrighted works; and

(v) such other factors as the Librarian considers appropriate. 17 U.S.C. 1201(a)(1)(C).

These statutory considerations require examination and careful balancing. The harm identified by a proponent of an exemption must be balanced with the harm that would result from an exemption. In some circumstances, the adverse effect of a proposed exemption in light of these considerations may be greater than the harm posed by the prohibition on circumvention of works in the proposed class. Perhaps the proper balance can be resolved by carefully tailoring the scope of the class, but ultimately, the determination of the Librarian must take all of these factors into account.

3. Written Comments

In the first rulemaking, the Register determined that the burden of proof is on the proponent of an exemption to come forward with evidence supporting an exemption for a particular class of works. In this fifth triennial rulemaking, the Register shall continue with the procedure adopted in the second, third and fourth rulemakings: Comments submitted in the initial comment period should be confined to proposals for exempted classes. They should specifically identify particular classes of works adversely affected by the prohibition and provide evidentiary support for the need for the proposed exemptions (*see* section F above).

Proponents should present their *entire* case in their initial comments. A proponent of a particular class of works will not be permitted to submit an additional comment in support of that class in response to the December notice of proposed rulemaking unless, at least 15 days before the deadline for comments in response to the notice of proposed rulemaking, the proponent has submitted a written request for permission to submit an additional comment demonstrating good cause to permit the submission of the comment, and the Copyright Office has approved the submission of the comment. The purpose of this requirement is to provide for the orderly presentation of evidence and arguments, and to permit both proponents and opponents to present their best cases.

For each particular class of works that a commenter proposes for exemption, the commenter should first identify that class, followed by a summary of the argument in favor of exempting that proposed class. The commenter should then specify the facts and evidence providing a basis for this exemption. This factual information should ideally include the technological measure that controls access and the manner in which this technological measure operates to control access to a copyrighted work. Finally, the commenter should state any legal arguments in support of the exemption, including the activity that is claimed to be noninfringing, the legal basis for this claim, and why this noninfringing activity cannot be accomplished in other ways. The legal argument should include an analysis of the factors set forth in 17 U.S.C. 1201(a)(1)(C), discussed above. This format of class/summary/facts/argument should be sequentially followed for each class of work proposed as necessary.

As discussed above, the best evidence in support of an exemption would consist of concrete examples or specific instances in which the prohibition on circumvention of technological measures protecting access has had or is likely to have an adverse effect on noninfringing uses. It would also be useful for the commenter to quantify the adverse effects in order to explain the scope of the present or likely problem. As noted above, demonstrating only

isolated instances of relatively minimal adverse effects is not likely to meet the proponent's burden.

Comments subsequently submitted in response to exemptions proposed in the first round of comments should provide factual information and legal argument addressing whether or not a proposed exemption should be adopted. Since the comments in this second round are intended to be responsive to the initial comments, commenters must identify which proposal(s) they are responding to, whether in opposition, support, amplification or correction. As with initial comments, these responsive comments should first identify the proposed class or classes to which the comment is responsive, provide a summary of the argument, and then provide the factual and/or legal support for their argument. This format of class/summary/facts and/or legal argument should be repeated for each comment responsive to a particular proposed class of work.

All comments must, at a minimum, contain the legal name of the submitter and the entity, if any, on whose behalf the comment was submitted. If persons do not wish to have their address, telephone number, or email address publicly displayed on the Office's website, comments should not include such information on the document itself but should only include the legal name of the commenter. The Office strongly prefers that all comments be submitted in electronic form and the electronic form will provide a place to provide the required information separately from the attached comment submission. However, anyone who cannot submit comments electronically may contact the Copyright Office at 202–707–8380 for special instructions. Electronic comments successfully submitted through the Office's website will generate a confirmation receipt to the submitter.

4. Submission of Comments

The Copyright Office's Web site will contain a submission page at: *http://www.copyright.gov/1201/comment-forms.* Approximately thirty days prior to the deadline for submission of comments, the form page will be activated on the Copyright Office Web site allowing information to be entered into the required fields, including the name of the person making the submission, mailing address, telephone number, and email address. There will also be non-required fields for, *e.g.,* the commenter's title, the organization that the commenter is representing, whether the commenter is likely to request to testify at public hearings and if so, whether the commenter is likely to prefer to testify in Washington, DC, or at a location in California. Commenters will also be required to fill in two additional fields: (1) The proposed class or classes of copyrighted work(s) to be exempted, and (2) a brief summary of the argument(s).

All comments submitted electronically must be sent as an attachment, and must be in a single file in either Adobe Portable Document File (PDF) format (preferred), Microsoft, WordPerfect, Rich Text Format (RTF), or ASCII text file format. There will be a browse button on the form that will allow submitters to attach the comment file to the form and then to submit the completed form to the Office.

The personal information entered into the required fields on the form page will not be publicly posted on the Copyright Office website, but the Office intends to post on its website the name of the proponent, the proposed class and possibly the summary of the argument, as well as the entire, attached comment document. Only the commenter's name is required on the comment document itself and a commenter who does not want other personal information posted on the Office's Web site should avoid including other personal information on the comment itself. Except in exceptional circumstances, changes to the submitted comment will not be allowed and it will become a part of the permanent public record of this rulemaking.

Comments will be accepted for a period of 30 days, and a form will be placed on the Copyright Office Web site 30 days prior to the deadline for submission. Initial comments will be accepted from November 2, 2011, until December 1, 2011, at 5 p.m. Eastern Standard Time, at which time the submission form will be removed from the website. The deadline for the second round of comments will be announced in the Notice of Proposed Rulemaking to be published in December, and will probably be early in February 2012.

5. Hearings

As mentioned above, after the conclusion of the comment periods, the Register intends to hold public hearings in the Spring. The dates and locations of the hearings in, have not yet been determined, although at a minimum hearings will be conducted in Washington DC and, possibly, in California. A separate notice providing details about all hearings in this rulemaking proceeding will be published at a later time in the **Federal Register** and on the Copyright Office's website. In order to assist the Copyright Office in identifying the number of days for hearings, the comment form page will contain non-required fields asking whether the commenter is likely to request to testify and if so, in which location. Formal requests to testify will be solicited early in 2012.

As noted above, following the hearings, the Copyright Office may request additional information from parties who have been involved in the rulemaking process. Such requests for responses to questions will take the form of a letter from the Copyright Office and will be addressed to particular parties involved in an issue in which more information is sought. These inquiries will include deadlines based on when the requests for information are sent. After the receipt of all responses to all inquiries from the Copyright Office, the Office will post the questions, the parties to whom the questions were sent, and the responses on the Copyright Office's website.

6. Process for Untimely Submissions Based on Exceptional or Unforeseen Circumstances

To provide sufficient flexibility in this proceeding in the event that unforeseen developments occur after the deadlines for the filing of initial comments, a person wishing to propose an exemption for a particular class of works after the specified deadline for initial comments may petition the Register to consider an additional exemption. A petition, including proposed new classes of works to be exempted, must be in writing and must set forth the reasons why the information could not have been made available earlier and why it should be considered by the Register after the deadline. A petition must also be accompanied by a comment that meets the requirements for initial comments set forth in section 3 above. Any person wishing to submit a petition should contact the Copyright Office at 202–707–8380 for further information on how to submit the petition. Such petitions will be granted only when the Office has been satisfied that late submission is justified due to exceptional or unforeseen circumstances. Exceptional or unforeseen circumstances generally require that the proposal be based upon information that did not exist at the time of the comment periods. A person wishing to file any other untimely submission (e.g., a comment in response to a proposed class of works) may also petition the Register to consider such submission, but such untimely submissions will be disfavored. The Register will make a determination

whether to accept a petition based on the stage of the rulemaking process at which the request is made and the merits of the petition. A substantively meritorious petition may be denied if the petition comes so late in the process that adequate notice and comment cannot be accommodated within the statutory time frame of the rulemaking process. The mere fact that an interested party was unaware of this proceeding or of any particular exemptions proposed in this proceeding is not a valid justification for a late submission. If a petition is accepted, the Register will publish the proposal in the **Federal Register** and announce deadlines for comments. If a petition is denied, the Register will set forth the reasons for the denial in a letter to the petitioner. All petitions and responses will become part of the public record in this rulemaking process.

Dated: September 23, 2011.

Maria A. Pallante,

Register of Copyrights.

[FR Doc. 2011–25106 Filed 9–28–11; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0561; FRL–9469–2]

Revisions to the California State Implementation Plan, Santa Barbara Air Pollution Control District, Sacramento Municipal Air Quality Management District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Santa Barbara Air Pollution Control District (SBAPCD), Sacramento Municipal Air Quality Management District (SMAQMD) and South Coast Air Quality Management District (SCAQMD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from solvent cleaning machines and solvent cleaning operations and oil and gas production wells. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by October 31, 2011.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0561, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

2. *E-mail: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov*, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Adrianne Borgia, EPA Region IX, (415) 972–3576, *borgia.adrianne@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: SBAPCD Rule 321, ''Solvent Cleaning Machines and Solvent Cleaning'', SMAQMD Rule 466, ''Solvent Cleaning'', SCAMQD Rule 1171, ''Solvent Cleaning Operations'' and SCAMQD Rule 1148.1, ''Oil and Gas Production Wells.'' In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: September 7, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–24689 Filed 9–28–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 160

[Docket No. USCG–2011–0076]

RIN 1625–AB60

Inflatable Personal Flotation Devices

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: On March 30, 2011, the Coast Guard published a direct final rule that notified the public of the Coast Guard's intent to harmonize structural and performance standards for inflatable recreational personal flotation devices (PFDs) with current voluntary industry consensus standards, and to slightly modify regulatory text in anticipation of a future rulemaking addressing the population for which inflatable recreational PFDs are approved (76 FR 17561). As discussed below, we have received an adverse comment on the direct final rule, and have withdrawn the direct final rule in a notice of withdrawal published separately in this issue of the **Federal Register**. The Coast Guard seeks comment on the issues raised by the commenters and proposes to make the same changes to the current regulatory text, as modified below.