

[Proposed class or classes of copyrighted work(s) to be exempted]= Lawfully purchased sound recordings, audiovisual works, and software programs distributed commercially in digital format by online music and media stores and protected by technological measures that depend on the continued availability of authenticating servers.

[Brief summary of the argument(s) in support of the exemption proposed above]= Most online music and media stores, such as Apple's iTunes Store and Microsoft's Zune Marketplace, use digital rights management (DRM) technologies in order to limit consumers' access to the music, videos, and software that they have lawfully purchased. Although DRM technologies differ by store, many require that a user authenticate any purchased works with a remote central server, run by the seller, in order to transfer the works to, and access them on, other computers or portable devices as permitted by the terms of purchase. At least one media store has required authentication when a user simply upgraded his operating system. Another media store required authentication every time a user wished to play one of the purchased works.

During the past decade, several major online music and video stores have ceased operating and stopped, or announced that they would stop, operating their DRM authenticating servers, thus endangering continued customer access to their lawfully purchased content. So far, widespread consumer backlash has forced these stores to either keep their DRM servers alive beyond the initially stated date of server termination, refund their customers the purchase price of all purchased works, or both. While these measures have so far prevented customers from losing complete access to their lawfully purchased works, there is no reason to believe that other companies or services that fail or are shut down in the future will provide similar corrective steps. When this happens, users will be adversely affected in their ability to continue making noninfringing uses of lawfully purchased media due to the DRM measures and §1201(a)'s prohibition on circumvention of those measures.

An exemption granted to the requested class of works would not affect the rights of copyright owners or the value of their works in any meaningful way. Consumers who previously purchased the works would simply be assured of access to the works for which they already have paid and have obtained a legal, noninfringing right to use, thereby maintaining, and perhaps even increasing, the market demand for and value of the protected works.

A similar exemption for technologists and researchers studying, evaluating and documenting how the DRM schemes work prior to a DRM-based service's demise or the shutdown or failure of its authenticating servers will ensure that the information regarding the operation of such servers will be available to users in case of service failure, similarly increasing consumer confidence in such purchases.