

114TH CONGRESS  
1ST SESSION

# S. 990

To improve the process by which the Librarian of Congress considers requests for exemptions to section 1201(a)(1)(A) of title 17, United States Code, and to ease restrictions on the use of certain statutory exemptions to the Digital Millennium Copyright Act.

---

## IN THE SENATE OF THE UNITED STATES

APRIL 16, 2015

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

## A BILL

To improve the process by which the Librarian of Congress considers requests for exemptions to section 1201(a)(1)(A) of title 17, United States Code, and to ease restrictions on the use of certain statutory exemptions to the Digital Millennium Copyright Act.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Breaking Down Bar-

5 riers to Innovation Act of 2015”.

6 **SEC. 2. SENSE OF CONGRESS.**

7 It is the sense of Congress that—

1           (1) the Librarian of Congress (referred to in  
2 this section as the “Librarian”) should ensure that  
3 noninfringing uses of copyrighted works, as well as  
4 activities unrelated to the copyrighted works, are not  
5 unduly burdened by the application of section 1201  
6 of title 17, United States Code;

7           (2) the Librarian should apply section 1201 of  
8 title 17, United States Code, in a manner that  
9 strikes a balance between the ability of persons to  
10 make noninfringing use of copyrighted works and  
11 the legitimate protection of intellectual property  
12 rights;

13           (3) the Librarian, in considering whether to  
14 grant exemptions to the prohibition on the cir-  
15 cumvention of technological protection measures,  
16 should recognize that such measures prevent persons  
17 from undertaking activities unrelated to the use of  
18 copyrighted works; and

19           (4) the Librarian—

20               (A) should not impose undue burdens on  
21 proponents of exemptions; and

22               (B) should ensure that the rulemaking  
23 process for considering exemptions is responsive  
24 to changes in the technological landscape.

1 **SEC. 3. CIRCUMVENTION OF COPYRIGHT PROTECTION SYS-**  
2 **TEMS.**

3 (a) VIOLATIONS REGARDING CIRCUMVENTION OF  
4 TECHNOLOGICAL MEASURES.—

5 (1) IN GENERAL.—Section 1201(a)(1) of title  
6 17, United States Code, is amended—

7 (A) in subparagraph (A), by striking the  
8 second sentence;

9 (B) in subparagraph (C)—

10 (i) in the matter preceding clause

11 (i)—

12 (I) by striking “During the 2-  
13 year period described in subparagraph  
14 (A), and during each succeeding 3-  
15 year period,” and inserting “Every 3  
16 years,”; and

17 (II) by striking “the Librarian  
18 shall examine” and inserting “the Li-  
19 brarian shall consider, if applicable”;

20 (ii) in clause (i), by striking “the  
21 availability for use of copyrighted works”  
22 and inserting “any reduction in the avail-  
23 ability for use of copyrighted works as a  
24 result of the prohibition on the circumven-  
25 tion of technological measures”;

1 (iii) in clause (iii), by striking “or re-  
2 search” and inserting the following: “re-  
3 pair, recycling, research, or other fair uses,  
4 and on access to information not subject to  
5 copyright protection”;

6 (iv) by redesignating clauses (iv) and  
7 (v) as clauses (vi) and (vii), respectively;  
8 and

9 (v) by inserting after clause (iii) the  
10 following:

11 “(iv) the impact that the prohibition  
12 on the circumvention of technological  
13 measures has on the accessibility of works  
14 and technologies for persons with disabili-  
15 ties;

16 “(v) the impact that the prohibition  
17 on the circumvention of technological  
18 measures has on the furtherance of secu-  
19 rity research;”;

20 (C) by redesignating subparagraph (D) as  
21 subparagraph (F);

22 (D) by striking subparagraph (E);

23 (E) by inserting after subparagraph (C)  
24 the following:

1 “(D) In making a determination under subparagraph  
2 (C), the Librarian—

3 “(i) shall consider the totality of the evidence  
4 available to the Librarian; and

5 “(ii) may not assign the burden of proof to a  
6 proponent of an exemption.

7 “(E) The Librarian, at the discretion of the Librar-  
8 ian, may conduct a rulemaking proceeding under subpara-  
9 graph (C) outside of the 3-year review process described  
10 in that subparagraph if the Librarian determines that it  
11 is substantially likely that persons who are users of a copy-  
12 righted work which is in a particular class of works are,  
13 or are likely to be in the succeeding 3-year period, ad-  
14 versely affected by virtue of the prohibition under subpara-  
15 graph (A) in their ability to make noninfringing uses of  
16 that particular class of works under this title.”;

17 (F) in subparagraph (F), as redesign-  
18 nated—

19 (i) by striking “The Librarian” and  
20 inserting “(i) The Librarian”;

21 (ii) by striking “adversely affected,  
22 and the prohibition” and inserting the fol-  
23 lowing: “adversely affected.

24 “(ii) The prohibition”; and

1 (iii) by adding at the end the fol-  
2 lowing:

3 “(iii) At the end of each 3-year period described in  
4 subparagraph (C), the Librarian shall renew for the ensu-  
5 ing 3-year period each exemption granted under subpara-  
6 graph (C) unless the Librarian determines that, as a re-  
7 sult of changed circumstances, it is unlikely that any per-  
8 sons who are users of a copyrighted work in the class of  
9 copyrighted works to which the exemption relates will be  
10 adversely affected by virtue of the prohibition under sub-  
11 paragraph (A) in their ability to make noninfringing uses  
12 of that particular class of works under this title.”; and

13 (G) by inserting after subparagraph (F),  
14 as redesignated, the following:

15 “(G) For purposes of this paragraph—

16 “(i) persons are ‘adversely affected’ if a techno-  
17 logical measure that effectively controls access to a  
18 work which is in a particular class of copyrighted  
19 works diminishes the ability of the persons to make  
20 noninfringing uses of that particular class of works  
21 under this title;

22 “(ii) if a technological measure inhibits non-  
23 infringing uses of a work which is in a particular  
24 class of copyrighted works relating to improving ac-  
25 cessibility of works or technologies for persons with

1 disabilities, there shall be a presumption that per-  
2 sons who use that particular class of work are likely  
3 to be adversely affected; and

4 “(iii) the Librarian may find that a use of a  
5 work is noninfringing based upon the totality of the  
6 circumstances, including—

7 “(I) the presence of supporting judicial  
8 precedent;

9 “(II) the absence of contrary judicial  
10 precedent;

11 “(III) the intent of Congress; and

12 “(IV) any other factors relevant to—

13 “(aa) assessing the applicability of  
14 copyright protection; or

15 “(bb) exceptions to or limitations on  
16 copyright protection.”.

17 (2) REPORT.—Not later than 1 year after the  
18 date of enactment of this Act, the Librarian of Con-  
19 gress, in consultation with the Register of Copy-  
20 rights and the Assistant Secretary for Communica-  
21 tions and Information of the Department of Com-  
22 merce, shall—

23 (A) conduct a study, including by soliciting  
24 public comment, on—

1 (i) ways to ease the burden on persons  
2 requesting an exemption under section  
3 1201(a)(1)(C) of title 17, United States  
4 Code, as amended by paragraph (1);

5 (ii) how the process for requesting  
6 and granting exemptions described in  
7 clause (i) can be used to foster security re-  
8 search; and

9 (iii) how the process for requesting  
10 and granting exemptions described in  
11 clause (i) can be expanded to enable the  
12 sale and dissemination of circumvention  
13 tools, as described in subsections (a)(2)  
14 and (b)(1) of section 1201 of title 17,  
15 United States Code, for the sole purposes  
16 of enabling circumventions with respect to  
17 the classes of copyrighted works that the  
18 Librarian has published under subpara-  
19 graph (F) of subsection (a)(1) of such sec-  
20 tion, as redesignated by paragraph (1);  
21 and

22 (B) shall submit to Congress a report on  
23 the study conducted under subparagraph (A)  
24 that includes—



1 (i) proposed legislation to achieve the  
2 goals described in clauses (i) and (ii) of  
3 subparagraph (A); and

4 (ii) a description of any obstacles to  
5 the expansion described in clause (iii) of  
6 subparagraph (A) and proposed legislation  
7 for achieving such an expansion.

8 (b) REVERSE ENGINEERING.—Section 1201(f) of  
9 title 17, United States Code, is amended—

10 (1) in paragraph (1), by striking “for the sole  
11 purpose” and all that follows through “engaging in  
12 the circumvention” and inserting the following: “for  
13 the sole purpose of undertaking activities aimed at  
14 achieving interoperability of an independently cre-  
15 ated computer program with other programs”;

16 (2) in paragraph (2), by striking “in order to  
17 enable” and all that follows through “achieve such  
18 interoperability” and inserting the following: “for  
19 the activities described under paragraph (1), or for  
20 the purpose of enabling interoperability of an inde-  
21 pendently created computer program with other pro-  
22 grams”; and

23 (3) in paragraph (3), by striking “if the per-  
24 son” and all that follows through “other programs,  
25 and”.

1           (c) ENCRYPTION RESEARCH.—Section 1201(g) of  
2 title 17, United States Code, is amended—

3           (1) in paragraph (1)(A)—

4                   (A) by striking “activities necessary to  
5 identify and analyze flaws” and inserting “ac-  
6 tivities relating to the identification and anal-  
7 ysis of flaws”; and

8                   (B) by striking “to advance the state of  
9 knowledge in the field of encryption technology”  
10 and inserting “for research purposes”;

11           (2) in paragraph (2)—

12                   (A) in subparagraph (B), by striking “nec-  
13 essary to conduct” and inserting “undertaken  
14 in the course of conducting”; and

15                   (B) in subparagraph (D), by striking all  
16 that follows “infringement under this title” and  
17 inserting a period;

18           (3) by striking paragraphs (3) and (5);

19           (4) by redesignating paragraph (4) as para-  
20 graph (3); and

21           (5) in paragraph (3)(B), as redesignated, by  
22 striking “with whom he or she is working collabo-  
23 ratively”.

1 (d) PROTECTION OF PERSONALLY IDENTIFYING IN-  
2 FORMATION.—Section 1201(i)(1)(D) of title 17, United  
3 States Code, is amended—

4 (1) by striking “solely”; and

5 (2) by striking “who seeks to gain access to the  
6 work protected, and is not in violation of any other  
7 law”.

8 (e) SECURITY TESTING.—Section 1201(j) of title 17,  
9 United States Code, is amended—

10 (1) in paragraph (2), by striking all that follows  
11 “infringement under this title” and inserting a pe-  
12 riod;

13 (2) by striking paragraph (3);

14 (3) by redesignating paragraph (4) as para-  
15 graph (3); and

16 (4) in paragraph (3), as redesignated, by strik-  
17 ing “subsection (2)” and all that follows and insert-  
18 ing “paragraph (2)”.

○