

A applied the same heritage process profile to the new equipment, retained heritage printed circuit board samples for periodic process control comparisons, and implemented periodic visual/x-ray inspections for consistency validation. Heritage and new equipment specifications were also assessed to compare their performance characteristics. White Sand Missile Range has reviewed and accepted this process change, for U.S. Government launch vehicle programs conducting launches from its launch range, based on improved reliability and quality of the process.

The FAA waives the requirements of E417.7(f)(2) and (5) because the Electron has implemented a failsafe flight safety system design that would terminate thrust to the vehicle should both flight termination receivers fail or communication was lost with the ground station, and RL's operating area is remote enough that were it to experience a catastrophic failure, it would not jeopardize public health and safety and safety of property. The Electron test flight missions would occur from the isolated Mahia Peninsula in New Zealand. The area within 20 NM of Mahia Peninsula has a very low population density. The Electron flight corridor is over the broad ocean area with minimal impact on air and marine traffic. Consequence analysis showed that less than 1 in 100,000 casualties would be expected if the worst foreseeable vehicle response mode (*i.e.*, where the vehicle guidance is assumed to fail in a manner that leads to an attempt to guide to erroneous, randomly located points) occurred at the worst flight time (relatively early in flight before the vehicle proceeds downrange) and the flight termination receiver failed to activate. Thus, the casualty expectation given the assumption of the worst possible failure would on average still produce significantly less casualties than the FAA's limit of 1 in 10,000, which does not assume failure but rather assigns realistic failure probabilities. Also, the flight termination receiver's failsafe feature will terminate thrust if there is a loss of power or Radio Frequency carrier or pilot tone signal, providing an additional safety margin. For these reasons, the FAA has determined that waiving sections E417.7(f)(2) and (5) for the Electron test flight missions from Mahia, New Zealand will not jeopardize public health and safety or safety of property.

*ii. National Security and Foreign Policy Implications*

The FAA has identified no national security or foreign policy implications associated with granting this waiver.

*iii. Public Interest*

The waiver is consistent with the public interest goals of Chapter 509 and the National Space Transportation Policy. Three of the public policy goals of Chapter 509 are: (1) To promote economic growth and entrepreneurial activity through use of the space environment; (2) to encourage the United States private sector to provide launch and reentry vehicles and associated services; and (3) to facilitate the strengthening and expansion of the United States space transportation infrastructure to support the full range of United States space-related activities. See 51 U.S.C. 50901(b)(1), (2), (4).

RL seeks to lower the cost and increase the frequency of access to space for small payloads, potentially expanding the opportunity for space services and research. These activities will help to make the U.S. launch industry more competitive internationally. The National Space Transportation Policy states that strengthening U.S. competitiveness in the international launch market and improving the cost effectiveness of U.S. space transportation services are in the public interest:

Maintaining an assured capability to meet United States Government needs, while also taking the necessary steps to strengthen U.S. competitiveness in the international commercial launch market, is important to ensuring that U.S. space transportation capabilities will be reliable, robust, safe, and affordable in the future. Among other steps, improving the cost effectiveness of U.S. space transportation services could help achieve this goal by allowing the United States Government to invest a greater share of its resources in other needs such as facilities modernization, technology advancement, scientific discovery, and national security. Further, a healthier, more competitive U.S. space transportation industry would facilitate new markets, encourage new industries, create high technology jobs, lead to greater economic growth and security, and would further the Nation's leadership role in space.

More specifically, Rocket Lab will be carrying onboard the Electron launch vehicle on its inaugural launch a flight test experiment for NASA Kennedy Space Center which will improve public risk mitigation capabilities from an errant launch vehicle. This component

is designed and manufactured by NASA KSC and is part of the independent safety system which will be installed on the launch vehicles. This safety system will be capable of determining if the flight of the launch vehicle will pose an unacceptable increased risk to the public based on mission rules designed for its unique vehicle and flight characteristics and programmed into the safety system and terminate the flight of such launch vehicle. This type of capability is in public interest because this safety system will allow for improved protection of the public from mishaps resulting from flight of errant launch vehicles.

Issued in Washington, DC, on May 15, 2017.

**Kenneth Wong,**

*Commercial Space Transportation, Licensing and Evaluation Division Manager.*

[FR Doc. 2017-13567 Filed 6-29-17; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[Docket No. USCG-2016-0257]

RIN 1625-AA09

**Drawbridge Operation Regulation; Delaware River, Pennsauken Township, NJ**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to modify the operating regulation that governs the DELAIR Memorial Railroad Bridge across the Delaware River, mile 104.6, at Pennsauken Township, NJ. This proposed regulation will allow the bridge to be remotely operated from the Conrail South Jersey dispatch center in Mount Laurel, NJ, instead of being operated by an on-site bridge tender. This regulation will not change the operating schedule of the bridge.

**DATES:** Comments and related material must reach the Coast Guard on or before August 18, 2017.

**ADDRESSES:** You may submit comments identified by docket number USCG-2016-0257 using Federal eRulemaking Portal at <http://www.regulations.gov>.

See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or email Mr. Hal R. Pitts, Fifth Coast Guard District (dpb); telephone (757) 398-6222, email *Hal.R.Pitts@uscg.mil*.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

- CFR Code of Federal Regulations
- DHS Department of Homeland Security
- FR Federal Register
- NPRM Notice of proposed rulemaking
- § Section
- U.S.C. United States Code

**II. Background, Purpose and Legal Basis**

The DELAIR Memorial Railroad Bridge across the Delaware River, mile 104.6, at Pennsauken Township, NJ,

owned and operated by Conrail Shared Assets, has a vertical clearance of 49 feet above mean high water in the closed-to-navigation position. There is a daily average of 28 New Jersey Transit trains and eight Conrail freight trains that cross the bridge and a daily average of three bridge openings that allow one or more vessels to transit through the bridge during each opening. The bridge is normally maintained in the closed position due to the average daily number of trains crossing the bridge. The operating schedule is published in 33 CFR 117.716. This current operating schedule has been in effect since 1984 and will not change with the implementation of remote operation of the bridge. However, within this proposed operating schedule, § 117.716

will be restructured from its current configuration to clearly distinguish the remote operation of the DELAIR Memorial Railroad Bridge. This proposed operating regulation allows the bridge to be operated remotely from the bridge owner’s South Jersey dispatch center in Mount Laurel, NJ.

The Delaware River is used by a variety of vessels, including deep draft commercial vessels, tug and barge traffic, recreational vessels, and public vessels, including military vessels of various sizes. The three-year average number of bridge openings and maximum number of bridge openings by month and overall for 2013 through 2015, as drawn from the data contained in the bridge tender logs, is presented below.

Month	Average openings	Maximum openings
January	73	88
February	54	56
March	80	94
April	55	68
May	60	67
June	60	71
July	122	162
August	112	138
September	143	201
October	109	117
November	100	116
December	100	122
Monthly	89	201
Daily	3	7

The bridge owner and the maritime community have been working together since 2013 in an effort to incorporate sensors and other technologies into the bridge and the Conrail South Jersey dispatch center to allow for the safe and effective remote operation of the bridge.

On April 12, 2017, the Coast Guard published a temporary deviation entitled “Drawbridge Operation Regulation; Delaware River, Pennsauken Township, NJ” in the **Federal Register** (82 FR 17561). This test deviation allows the bridge to be operated remotely from the bridge owner’s South Jersey dispatch center in Mount Laurel, NJ. This test deviation is effective from 8 a.m. on April 24, 2017, to 7:59 a.m. on October 21, 2017.

**III. Discussion of Proposed Rule**

This proposed operating regulation will allow the bridge to be operated remotely from the bridge owner’s South Jersey dispatch center in Mount Laurel, NJ. The remote operation system will include eight camera views (four marine and four rail), two forward-looking infrared equipped camera views

(marine), marine radar, a dedicated telephone line for bridge operations, radio telephone on VHF-FM channels 13 and 16, and an automated identification system (AIS) transmitter to provide bridge status. The AIS transmitter has been installed on the New Jersey side of the bridge at the bridge and land intersection in approximate position 39°58’50.52” N. (39.9807), 75°03’58.75” W. (-75.06632). The AIS transmitter is assigned maritime mobile service identity (MMSI) number 993663001 and will provide the status of the bridge (open/closed/inoperative) via the name transmitted by the private aids to navigation as DELAIR BRG-OPEN (fully open and locked position, channel light green), DELAIR BRG-CLOSED (other than fully open, not inoperative), or DELAIR BRG-INOP (other than fully open, inoperative). The AIS transmitter will transmit the bridge status every two minutes and upon a change in the bridge status.

The remote operation system is designed to provide equal or greater capabilities compared to the on-site

bridge tender in visibility of the waterway and bridge and in signals (communications) via sound and visual signals and radio telephone (voice) via VHF-FM channels 13 and 16. The remote operation system also incorporates real-time bridge status via AIS signal to aid mariners in voyage planning and navigational decision-making, a dedicated telephone line (856) 231-2301 for bridge operations, and push-to-talk (PTT) capability on VHF-FM channel 13.

The signals for the remote operation center or on-site bridge tender to respond to a sound signal for a bridge opening will include: (1) When the draw can be opened immediately—a sound signal of one prolonged blast followed by one short blast and illumination of a fixed white light not more than 30 seconds after the requesting signal, and (2) when the draw cannot be opened immediately—five short blasts sounded in rapid succession and illumination of a fixed red light not more 30 seconds after the vessel’s opening signal. The signals for the remote operation center or on-site

bridge tender to respond to a visual signal for a bridge opening will include: (1) When the draw can be opened immediately—illumination of a fixed white light not more than 30 seconds after the requesting signal, and (2) when the draw cannot be opened immediately—illumination of a fixed red light not more than 30 seconds after the vessel's opening signal. The fixed white light will remain illuminated until the bridge reaches the fully open position. The fixed white and red lights will be positioned on the east (New Jersey) bridge abutment adjacent to the navigation span.

Vessels that require an opening shall continue to request an opening via the methods defined in 33 CFR 117.15(b) through (d) (sound or visual signals or radio telephone (VHF–FM) voice communications), via telephone at (856) 231–2301, or via push-to-talk (PTT) on VHF–FM channel 13. Vessels may push the PTT button five times while on VHF–FM channel 13 to request an opening.

The remote operation system will be considered in a failed condition and qualified personnel will return and operate the bridge within 60 minutes if any of the following conditions are found: (1) The remote operation system becomes incapable of safely and effectively operating the bridge from the remote operation center, (2) visibility of the waterway or bridge is degraded to less than equal that of an on-site bridge tender (all eight camera views are required), (3) signals (communications) via sound or visual signals or radio telephone (voice) via VHF–FM channels 13 or 16 become inoperative, or (4) AIS becomes inoperative.

#### IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

##### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and

pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

The determination that this NPRM is not a significant regulatory action is based on the findings that: (1) Vessels will continue to transit the bridge in accordance with 33 CFR 117.716, (2) the remote operation system is designed to provide equal or greater capabilities compared to the on-site bridge tender, and (3) the bridge owner will be capable of restoring on-site operation of the bridge within 60 minutes if the remote operation system fails.

##### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. There are no known adverse impacts to any entities related to this proposed rule, given no aspects of the remote operating system for the bridge will create any burdens on any entity as described in section IV.A above. The incorporation of the automated identification system (AIS) capability into the remote operation system is expected to aid mariners who have AIS capability or access to computer-based AIS data in safely navigating through the bridge by providing real-time bridge status.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies, and how, and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above. The Coast Guard will not retaliate against small entities that question or complain about this

proposed rule or any policy or action of the Coast Guard.

##### C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

##### D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

##### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Act) (2 U.S.C. 1531–1538) requires federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a state, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

##### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of

actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. Normally, such actions are categorically excluded from further review under figure 2–1, paragraph (32)(e), of the Instruction.

A preliminary Record of Environmental Consideration and a Memorandum for the Record are not required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that their message can be received without jeopardizing the safety or security of people, places, or vessels.

#### V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this notice of proposed rulemaking and all public comments are in our online docket at <http://www.regulations.gov> and can be viewed by following that Web site's instructions. Additionally, if you go to

the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

#### List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.716 to read as follows:

##### §117.716 Delaware River.

(a) The following apply to all drawbridges across the Delaware River:

(1) The draws of railroad bridges need not be opened when there is a train in the bridge block approaching the bridge with the intention of crossing or within five minutes of the known time of the passage of a scheduled passenger train.

(2) The opening of a bridge may not be delayed more than five minutes for a highway bridge or 10 minutes for a railroad bridge after the signal to open is given.

(3) The owners of drawbridges shall provide and keep in good legible condition two board gages painted white with black figures not less than six inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

(b) The draw of the Conrail Memorial Railroad Bridge, mile 104.6, at Pennsauken Township, NJ shall be operated as follows:

(1) The bridge will be remotely operated from the Conrail South Jersey dispatch center in Mount Laurel, NJ unless the remote operation system is in a failed condition.

(2) An AIS transmitter has been installed on the New Jersey side of the bridge at the bridge and land intersection in approximate position 39°58'50.52" N. (39.9807), 75°03'58.75" (-75.06632). The AIS transmitter is assigned maritime mobile service identity (MMSI) number 993663001. The status of the bridge (open/closed/inoperative) will be provided via the name transmitted by the AIS private aids to navigation as DELAIR BRG–OPEN (fully open and locked position, channel light green), DELAIR BRG–

CLOSED (other than fully open, not inoperative), or DELAIR BRG–INOP (other than fully open, inoperative). The AIS transmitter will transmit the bridge status every two minutes and upon a change in the bridge status.

(3) The remote operation system will be considered in a failed condition and qualified personnel will return and operate the bridge within 60 minutes if any of the following conditions are found:

(i) The remote operation system becomes incapable of safely and effectively operating the bridge from the remote operation center; or

(ii) Visibility of the waterway or bridge is degraded to less than equal that of an on-site bridge tender; or

(iii) Signals (communications) via sound or visual signals or radio telephone (voice) via VHF–FM channels 13 or 16 become inoperative; or

(iv) AIS becomes inoperative.

(4) Vessels that require an opening shall continue to request an opening via the methods defined in § 117.15(b) through (d) (sound or visual signals or radio telephone (VHF–FM) voice communications), via telephone at (856) 231–2301, or via push-to-talk (PTT) on VHF–FM channel 13. Vessels may push the PTT button five times while on VHF–FM channel 13 to request an opening.

(5) The signals for the remote operation center or on-site bridge tender to respond to a sound signal for a bridge opening include:

(i) When the draw can be opened immediately—a sound signal of one prolonged blast followed by one short blast and illumination of a fixed white light not more than 30 seconds after the requesting signal; or

(ii) When the draw cannot be opened immediately—five short blasts sounded in rapid succession and illumination of a fixed red light not more than 30 seconds after the vessel's opening signal.

(6) The signals for the remote operation center or on-site bridge tender to respond to a visual signal for a bridge opening include:

(i) When the draw can be opened immediately—illumination of a fixed white light not more than 30 seconds after the requesting signal; or

(ii) When the draw cannot be opened immediately—illumination of a fixed red light not more than 30 seconds after the vessel's opening signal.

(7) The fixed white light will remain illuminated until the bridge reaches the fully open position. The fixed white and red lights will be positioned on the east (New Jersey) bridge abutment adjacent to the navigation span.

Dated: June 19, 2017.

**M.L. Austin,**

*Rear Admiral, U.S. Coast Guard, Commander,  
Fifth Coast Guard District.*

[FR Doc. 2017-13857 Filed 6-29-17; 8:45 am]

**BILLING CODE 9110-04-P**

## LIBRARY OF CONGRESS

### Copyright Office

#### 37 CFR Part 201

[Docket No. 2017-10]

#### Exemptions To Permit Circumvention of Access Controls on Copyrighted Works

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Notice of inquiry and request for petitions.

**SUMMARY:** The United States Copyright Office is initiating the seventh triennial rulemaking proceeding under the Digital Millennium Copyright Act (“DMCA”), concerning possible temporary exemptions to the DMCA’s prohibition against circumvention of technological measures that control access to copyrighted works. In this proceeding, the Copyright Office is establishing a new, streamlined procedure for the renewal of exemptions that were granted during the sixth triennial rulemaking. If renewed, those current exemptions would remain in force for an additional three-year period (October 2018—October 2021). Members of the public seeking the renewal of current exemptions should submit petitions as described below; parties opposing such renewal will then have the opportunity to file comments in response. The Office is also accepting petitions for *new* exemptions to engage in activities not currently permitted by existing exemptions, which may include proposals that expand upon a current exemption. Those petitions, and any renewal petitions that are meaningfully opposed, will be considered pursuant to a more comprehensive rulemaking process similar to that used for the sixth rulemaking (*i.e.*, three rounds of written comment, followed by public hearings).

**DATES:** Written petitions for renewal of current exemptions must be received no later than 11:59 p.m. Eastern Time on July 31, 2017. Written comments in response to any petitions for renewal must be received no later than 11:59 p.m. Eastern Time on September 13, 2017. Written petitions for new exemptions must be received no later than 11:59 p.m. Eastern Time on September 13, 2017.

**ADDRESSES:** Written petitions for renewal of current exemptions must be completed using the form provided on the Office’s Web site at <https://www.copyright.gov/1201/2018/renewal-petition.pdf>. Written petitions proposing new exemptions must be completed using the form provided on the Office’s Web site at <https://www.copyright.gov/1201/2018/new-petition.pdf>. The Copyright Office is using the regulations.gov system for the submission and posting of public petitions and comments in this proceeding. All petitions and comments are therefore to be submitted electronically through [regulations.gov](https://www.regulations.gov). Specific instructions for submitting petitions and comments are available on the Copyright Office Web site at <https://www.copyright.gov/1201/2018>. If electronic submission is not feasible, please contact the Office using the contact information below for special instructions.

**FOR FURTHER INFORMATION CONTACT:**

Regan A. Smith, Deputy General Counsel, by email at [resm@loc.gov](mailto:resm@loc.gov), Anna Chauvet, Assistant General Counsel, by email at [achau@loc.gov](mailto:achau@loc.gov), or Jason E. Sloan, Attorney-Advisor, by email at [jslo@loc.gov](mailto:jslo@loc.gov). Each can be contacted by telephone by calling (202) 707-8350.

**SUPPLEMENTARY INFORMATION:**

#### I. The Digital Millennium Copyright Act and Section 1201

The Digital Millennium Copyright Act (“DMCA”) <sup>1</sup> has played a pivotal role in the development of the modern digital economy. Enacted by Congress in 1998 to implement the United States’ obligations under two international treaties,<sup>2</sup> the DMCA was intended to foster the growth and development of a thriving, innovative, and flexible digital marketplace by making digital networks safe places to disseminate and use copyrighted materials.<sup>3</sup> It did this by, among other things, ensuring adequate legal protections for copyrighted content to “support new ways of disseminating copyrighted materials to users, and to safeguard the availability of legitimate

uses of those materials by individuals.”<sup>4</sup>

These protections, codified in section 1201 of title 17, United States Code, as envisioned by Congress, seek to balance the interests of copyright owners and users, including the personal interests of consumers, in the digital environment.<sup>5</sup> Section 1201 does this by protecting the use of technological measures (also called technological protection measures or TPMs) used by copyright owners to prevent unauthorized access to or use of their works.<sup>6</sup> Section 1201 contains three separate protections for TPMs. First, it prohibits circumvention of technological measures employed by or on behalf of copyright owners to protect access to their works (also known as access controls). Access controls include, for example, a password requirement limiting access to a Web site to paying customers, or authentication codes in video game consoles to prevent the playing of pirated copies. Second, the statute prohibits trafficking in devices or services primarily designed to circumvent access controls. Finally, it prohibits trafficking in devices or services primarily designed to circumvent TPMs used to protect the copyright rights of the owner of a work (also known as copy controls). Copy controls protect against unauthorized uses of a copyrighted work once access has been lawfully obtained. They include, for example, technology preventing the copying of an e-book after it has been downloaded to a user’s device. Because title 17 already forbids copyright infringement, there is no corresponding ban on the act of circumventing a copy control.<sup>7</sup> These prohibitions supplement the preexisting rights of copyright owners under the Copyright Act of 1976 by establishing separate and distinct causes of action independent of any infringement of copyright.<sup>8</sup>

At the same time, section 1201 contains a number of discrete, statutory exemptions to these prohibitions, to avoid curtailing legitimate activities such as security testing, law enforcement activities, or the protection of personally identifying information.<sup>9</sup> In addition, to accommodate changing marketplace realities and ensure that access to copyrighted works for lawful

<sup>1</sup> Public Law 105-304, 112 Stat. 2860 (1998).

<sup>2</sup> WIPO Copyright Treaty, Dec. 20, 1996, 36 I.L.M. 65 (1997); WIPO Performances and Phonograms Treaty, Dec. 20, 1996, 36 I.L.M. 76 (1997).

<sup>3</sup> See Staff of H. Comm. on the Judiciary, 105th Cong., Section-by-Section Analysis of H.R. 2281 as Passed by the United States House of Representatives on August 4th, 1998, at 2, 6 (Comm. Print 1998) (“House Manager’s Report”); H.R. Rep. No. 105-551, pt. 2, at 21, 23 (1998); H.R. Rep. No. 105-551, pt. 1, at 10 (1998); S. Rep. No. 105-190, at 1-2, 8-9 (1998).

<sup>4</sup> House Manager’s Report at 6.

<sup>5</sup> See H.R. Rep. No. 105-551, pt. 2, at 26.

<sup>6</sup> 17 U.S.C. 1201(a)-(b).

<sup>7</sup> S. Rep. No. 105-190, at 12.

<sup>8</sup> U.S. Copyright Office, Section 1201 of Title 17, at i, iii, 43-45 (June 2017), <https://www.copyright.gov/policy/1201/section-1201-full-report.pdf> (“Section 1201 Study”).

<sup>9</sup> 17 U.S.C. 1201(d)-(j).