

Breaking Down Barriers to Innovation Act of 2015

The Breaking Down Barriers to Innovation Act of 2015 (the Act) amends the Digital Millennium Copyright Act of 1998 (DMCA) to reflect the realities of today's technology and innovation landscape. The DMCA bars the circumvention of access controls and technological protection measures (TPMs) that protect copyrighted works. However, those access controls and TPMs impede many legitimate activities, including security research, journalism, and the repair and maintenance of personal devices. By expanding the availability of exemptions, the Act promotes scientific research and freedom of expression and breaks down barriers to the fair use of copyrighted works.

Expands DMCA Statutory Exemptions: The Act reforms the DMCA to increase exemptions for legitimate reverse engineering, encryption research, the protection of personally identifying information, and security testing. It expands the ability of researchers and others to circumvent TPMs for legitimate purposes that, among other things, help safeguard the privacy, security and personal data of individuals.

Automatically Renews Administrative Exemptions: The Act automatically renews exemptions to the bar on circumvention granted by the Librarian of Congress through administrative rulemaking every three years, unless changed circumstances justify the retraction of the exemption. This reform will give greater certainty to security researchers and others who currently receive an exemption for only three years and then must face the burden of requesting a new exemption to continue their activities. The Act also enables the Librarian to consider requests for exemptions outside of the triennial review process.

Eases Burden for Obtaining Exemptions: To reflect that noninfringing uses of copyrighted works, and other legitimate activities, are just as important as the protection of intellectual property rights, the Act shifts the burden of proof in the administrative exemption process away from proponents of exemptions. The Act also includes, as factors that the Librarian must consider in approving exemptions, whether the prohibition on circumvention impacts (1) the accessibility of works and technologies for persons with disabilities; or (2) the furtherance of security research.

Requires Examination of Exemption Process and Expansion to Circumvention Tools: To ensure that the DMCA is implemented and further reformed to better strike the balance between innovation and the freedom of expression, on the one hand, and the protection of intellectual property rights, the Act instructs the Librarian to conduct a study on (1) ways to further ease the burden on persons requesting exemptions; (2) how the exemption process can be used to foster security research; and (3) how the exemption process can be expanded to circumvention tools.