

December 21, 2023

Short Comment to US Copyright Office
Ninth Triennial Section 1201 Proceeding (2024)
Class 4: Computer Programs—Generative AI Research.

Dear Sir or Madam:

HackerOne Inc. (HackerOne) submits the following comments in response to the US Copyright Office's Section 1201 of the Digital Millennium Copyright Act (DMCA). HackerOne supports the proposed exemption for Class 4: Computer Programs—Generative AI Research. We also encourage clarification on overlap with the Section 1201 exemption for good faith security research.

It is crucial to expand protection of artificial intelligence (AI) research efforts beyond addressing security to ensure the inclusion of independent testing for bias, discrimination, and other harmful or undesirable outputs in AI systems. By doing so, we can help ensure ethical development and responsible deployment of AI. This position aligns with the recent Biden Administration Executive Order (EO) 14110, which identifies AI red teaming as a key safeguard in AI development and monitoring. Under EO 14110, "AI red-teaming" is defined as "structured testing effort to find flaws and vulnerabilities in an AI system [...] most often performed by dedicated "red teams" that adopt adversarial methods to identify flaws and vulnerabilities, such as harmful or discriminatory outputs from an AI system, unforeseen or undesirable systems." As AI research is becoming a powerful tool to mitigate flaws, it is critical to enable independent research in this area.

Recognizing that cybersecurity and national security has long benefited from good faith security researchers' efforts to identify and resolve vulnerabilities, governments established legal protections to encourage responsible vulnerability disclosure and prevent legal actions that may impede researchers' work. For too long, laws aimed at prosecuting malicious hackers inadvertently created a chilling effect on researchers. The *Sandvig v. Barr* case foreshadows the likelihood of similar adverse effects for AI research under Section 1201.

To prevent this from happening with good faith AI research for bias, discrimination, and other harmful outputs, we recommend the Copyright Office establish a clear exemption for this activity. In HackerOne's long experience in this field, the security community has repeatedly encountered adverse impacts and chilling effects from laws that fail to distinguish between good faith research and malicious hacking, especially when wielded by organizations motivated primarily by avoidance of bad publicity. Developments such as the Copyright Office's Section 1201 exemption for good faith security research represent meaningful progress, but may be interpreted to not provide similar protection to good faith AI research uncovering bias, discrimination, and algorithmic flaws.

In addition to adopting the proposed exemption, we recommend the Copyright Office clarify how the existing exemption for good faith security research may protect AI research. Certain research pertaining to the confidentiality, integrity, and availability of AI data, or pertaining to the safety of AI systems or users of such systems, should be protected by the existing exemption, and it would be helpful for the Copyright Office to clarify this in the triennial proceeding. However, as noted above, security researchers also play a fundamental role in

disclosing non-security issues in AI systems, such as how AI can exacerbate racial discrimination in housing opportunities or financial decisions.

In sum, HackerOne supports the proposed exemption to protect independent generative AI research, but urges the Copyright Office to encompass bias, discrimination, and other harmful outputs, not just a limited definition of “bias.” HackerOne also encourages the Copyright Office to clarify how the exemptions apply to circumventing software access controls to research both security and non-security issues in AI systems. As society continues to rapidly adopt AI, the Copyright Office should establish ground rules now that enable independent testing for ethical principles, and that support responsible, fair, and innovative research practices into AI systems.

Respectfully Submitted,
Ilona Cohen, Chief Legal and Policy Officer, HackerOne