



# Petition to Renew a Current Exemption Under 17 U.S.C. § 1201

## 9th Triennial Rulemaking

Please submit a separate petition for each current exemption for which renewal is sought.

**NOTE:** Use this form if you want to renew a current exemption without modification. If you are seeking to engage in activities not currently permitted by an existing exemption, including those that would require the expansion of a current exemption, you must submit a petition for a new exemption using the form available at [copyright.gov/1201/2024/new-petition.pdf](https://copyright.gov/1201/2024/new-petition.pdf).

If you are seeking to expand a current exemption, we recommend that you submit both a petition to renew the current exemption without modification using this form, and, separately, a petition for a new exemption that identifies the current exemption and addresses only those issues relevant to the proposed expansion of that exemption.

### ITEM A. PETITIONERS AND CONTACT INFORMATION

Please identify the petitioners and provide a means to contact the petitioners and/or their representatives, if any. The “petitioner” is the individual or entity seeking renewal.

Electronic Frontier Foundation  
Mitchell L. Stoltz, Senior Staff Attorney  
Kit Walsh, Senior Staff Attorney  
815 Eddy Street  
San Francisco, California 91409  
mitch@eff.org  
kit@eff.org  
415-436-9333

**Privacy Act Advisory Statement:** Required by the Privacy Act of 1974 (P.L. 93-579)

The authority for requesting this information is 17 U.S.C. §§ 1201(a)(1) and 705. Furnishing the requested information is voluntary. The principal use of the requested information is publication on the Copyright Office website and use by Copyright Office staff for purposes of the rulemaking proceeding conducted pursuant to 17 U.S.C. § 1201(a)(1). NOTE: No other advisory statement will be given in connection with this application. Please keep this statement and refer to it if we communicate with you regarding this petition.

## ITEM B. IDENTIFY WHICH CURRENT EXEMPTION PETITIONERS SEEK TO RENEW

Check the appropriate box below that corresponds with the current temporary exemption (see **37 C.F.R. § 201.40**) the petitioners seek to renew. Please check only one box. If renewal of more than one exemption is sought, a separate petition must be submitted for each one.

### **Motion Pictures** (including television programs and videos):

- Excerpts for use in documentary filmmaking or other films where use is in parody or for a biographical or historically significant nature
- Excerpts for use in noncommercial videos
- Excerpts for use in nonfiction multimedia e-books
- Excerpts for educational purposes by college and university faculty, students, or employees acting at the direction of faculty, or K–12 educators and students
- Excerpts for educational purposes by faculty and employees acting at the direction of faculty in massive open online courses (“MOOCs”)
- Excerpts for educational purposes in digital and literacy programs offered by libraries, museums, and other nonprofits
- For the provision of captioning and/or audio description by disability services offices or similar units at educational institutions for students, faculty, or staff with disabilities
- For the preservation or the creation of a replacement copy of the motion picture by libraries, archives, or museums
- For text and data mining by a researcher affiliated with a nonprofit institution of higher education, or by student or staff at the direction of such researcher, for the purpose of scholarly research and teaching

### **Literary Works:**

- Literary works distributed electronically for text and data mining by a researcher affiliated with a nonprofit institution of higher education, or by student or staff at the direction of such researcher, for the purpose of scholarly research and teaching
- Literary works or previously published musical works that have been fixed in the form of text or notation whose technological protection measures interfere with assistive technologies
- Literary works consisting of compilations of data generated by medical devices or their personal corresponding monitoring systems, to access personal data

### **Computer Programs and Video Games:**

- Computer programs that operate wireless devices, to allow connection to an alternative wireless network (“unlocking”)
- Computer programs that operate smartphones and portable all-purpose mobile computing devices to allow the device to interoperate with or to remove software applications (“jailbreaking”)
- Computer programs that operate smart televisions to allow the device to interoperate with software applications on the television for purposes other than gaining unauthorized access to copyrighted works (“jailbreaking”)
- Computer programs that operate voice assistant devices to allow the device to interoperate with or to remove software applications for purposes other than gaining unauthorized access to copyrighted works (“jailbreaking”)
- Computer programs that operate routers and dedicated network devices to allow the device to interoperate with software applications on the device for purposes other than gaining unauthorized access to copyrighted works (“jailbreaking”)
- Computer programs that control motorized land vehicles, marine vessels, or mechanized agricultural vehicles or vessels for purposes of diagnosis, repair, or modification of the vehicle, including to access diagnostic data
- Computer programs that control devices designed primarily for use by consumers for diagnosis, maintenance, or repair of the device or system
- Computer programs that control medical devices or systems, and related data files, for diagnosis, maintenance, or repair of the device or system
- Computer programs for purposes of good-faith security research
- Video games for which outside server support has been discontinued, to allow individual play by gamers and preservation of games by libraries, archives, and museums (as well as necessary jailbreaking of console computer code for preservation uses only), and discontinued video games that never required server support, for preservation by libraries, archives, and museums
- Computer programs other than video games, for the preservation of computer programs and computer program-dependent materials by libraries, archives, and museums
- Computer programs that operate 3D printers, to allow use of alternative material
- Computer programs for purpose of investigating potential infringement of free and open source computer programs
- Video games in the form of computer programs for purpose of allowing an individual with a physical disability to use alternative software or hardware input methods

### ITEM C. EXPLANATION OF NEED FOR RENEWAL

Provide a brief explanation summarizing the continuing need and justification for renewing the exemption. The Office anticipates that petitioners will provide a paragraph or two detailing this information, but there is no page limit. While it is permissible to attach supporting documentary evidence as exhibits to this petition, it is not necessary. Below is a hypothetical example of the kind of explanation that the Office would regard as sufficient to support renewal of the unlocking exemption. The Office notes, however, that explanations can take many forms and may differ significantly based on the individual making the declaration and the exemption at issue.

I am a Senior Staff Attorney at the Electronic Frontier Foundation (“EFF”), a member-supported nonprofit organization that advocates for the public on technology policy. Part of EFF’s mission is to protect the free expression and autonomy of technology users, as well as to advance innovation. In service of these values, EFF participates in agency rulemaking, lawmaking conversations, client counseling, and impact litigation to support the rights of technology users to understand and control the software that runs their devices. EFF has been involved with the section 1201 rulemaking process since its inception and has specifically advocated for ‘jailbreaking’ exemptions that the Librarian has granted in previous rulemakings.

Users of smartphones, tablets and other all-purpose mobile computing devices continue to depend on the ability to jailbreak their devices, enabling them to add and remove software, and to enable interoperability with other software and hardware. Technological measures for access control exist on these devices that adversely impact the ability to make these noninfringing uses.

Through my work, I have personal knowledge that this need exists, and I have no reason to believe that it will abate during the next triennial period. EFF staff spoke to many device users who currently rely on the jailbreaking exemption and anticipate continuing to rely on the exemption in the future. Some examples include:

**Use of Alternate Operating Systems:** Many of the device owners EFF spoke to indicated that they use an alternate operating system for their devices, such as the operating system LineageOS. In order to install these alternate operating systems, iOS devices and many Android devices must first be jailbroken or rooted (the Android equivalent of jailbreaking). Users indicated they jailbreak their devices to control the device itself and add or remove software, often driven by their concerns about privacy, avoiding data collection by hardware and software providers, and the desire to customize the functionality of their devices. One device owner reported that they jailbreak their device to stop apps from reporting to Google when the owner installs and opens them, while another mentioned implementing security controls at the device level to block and filter internet traffic to and from entities they don’t want their traffic going to. Multiple device owners use an alternate operating system because certain features and bug fixes come sooner to alternate operating systems compared to the official one.

**Make Older Devices Functional:** Many users reported they use jailbreaking to keep their older devices functional. As devices become older, companies stop maintaining them or new updates gradually slow the phone down. By jailbreaking their devices, users are able to keep their older devices secure, improve their functioning, and prevent these devices that they paid hundreds of dollars for from becoming obsolete.

**Customization and Functionality:** Device owners also greatly value jailbreaking in order to develop custom app functionality that would not be approved by the manufacturer, or where approval would be unreasonably costly for the desired use. One example of this is creating an app to interface with a home security system made by a manufacturer who had been out of business for years and would never provide an official app. Users greatly value the ability to customize their devices to their specific needs but can be prevented from doing so by access controls and the official app approval process. Additionally, many users included that they prefer using open source applications that are peer reviewed, both due to their desire to support open source technologies and because some apps that make it through the official audit process have malware. While some of these apps are available on official app stores, other open source apps are only available outside official channels for a variety of reasons, such as to avoid paying high fees to Apple and Google or because the app has not been approved for official app stores. As Apple uses access controls to restrict app distribution to its official app store, iOS users rely on jailbreaking their devices to access these apps.

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**ITEM C. EXPLANATION OF NEED FOR RENEWAL** (CONT'D)

As was the case three years ago, while some Android manufacturers allow users to root their phones, many Android devices, including older ones, continue to employ access controls that prevent consumers from modifying their devices to interoperate with or to remove software applications. All iOS devices continue to employ such access controls. I am not aware of any likely anticipated changes to this industry practice, and even if the industry practice did change, users would still need to jailbreak older devices manufactured before the change. As many of the same devices discussed in the previous rulemaking round are still in use today and will be in the next three years, the need to jailbreak persists. Absent a renewed exemption, users will be adversely affected in seeking to make the noninfringing uses protected by this exemption in the last rulemaking. I respectfully request that the Librarian renew this exemption.

## ITEM D. DECLARATION AND SIGNATURE

The declaration is a sworn statement made under penalty of perjury and must be signed by one of the petitioners named above.

I declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. Based on my own personal knowledge and experience, I have a good faith belief that but for the above-selected exemption's continuation during the next triennial period (October 2024–October 2027), technological measures controlling access to relevant copyrighted works are likely to diminish the ability of relevant users to make noninfringing uses of these works, and such users are likely to rely upon the above-selected exemption during the next triennial period.
2. To the best of my knowledge, there has not been any material change in the facts, law, or other circumstances set forth in the prior rulemaking record (available at [copyright.gov/1201/2021](https://copyright.gov/1201/2021)) that originally demonstrated the need for the above-selected exemption, such that renewal of the exemption would not be justified.
3. To the best of my knowledge, the explanation provided in Item C above is true and correct and supports the above statements.

### Name/Organization:

*If the petitioner is an entity, this declaration must be signed by an individual at the organization having appropriate personal knowledge.*

Electronic Frontier Foundation

### Signature:

*This declaration may be signed electronically (e.g., "/s/ John Smith").*

/s/ Mitchell Stoltz

### Date:

7/6/2023