

Note: Please submit a separate comment for each proposed class.

This is a Word document that allows users to type into the spaces below. The comment should be no more than one page in length (which may be single-spaced but should be in at least 12-point type). The italicized instructions on this template may be deleted.

Short Comment Regarding a Proposed Exemption Under 17 U.S.C. 1201

Item 1. Commenter Information

Philip John
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USA

Item 2. Proposed Class Addressed

Proposed Class 23: Abandoned software – video games requiring server communication

Item 3. Statement Regarding Proposed Exemption

I support the proposed exemption.

I am a consumer of video games. It is something I enjoy and have enjoyed for decades.

As a consumer, it is becoming increasingly common for games to require online authentication to activate the game, and then an online login every time you want to play the game. While this is normally not a problem, in some cases gaming companies go out of business or decide to no longer support an older game, shutting down their servers.

This happened to me with the game Company of Heroes. I purchased the game but after a period of time, the company no longer supported the game. Even though I still wanted to play the game, I could not because the server was not available. It was still installed on my computer and I had the game DVDs.

As a consumer, buying a game may require agreeing to onerous licensing terms that are heavily in favor of the gaming company. The power and ability to modify the contract are solely in the hands of the gaming company. When a company decides to abandon a game after only a short period of time and consumer demand exists to continue to play the game, consumers are left with only two options. Stop playing the game even though they paid for the ability to play the game, or download an illegal copy of the game and continue to play it.

There is little to no harm to the gaming company, as they have abandoned the game and so can no longer expect to receive revenue from selling the game to consumers and will not gain new consumers of that product. However, existing customers are hugely impacted without the simple server authentication.

Gaming companies have no incentive to continue to support games after the revenue stream has declined. They can simply turn off the server, update the game slightly and re-release it as a 2015 version. Consumers will have no option but to purchase the new game, even when it is almost identical to the 2014 game they just purchased. This is a de-facto subscription model, explaining why it is so attractive to gaming companies. If you were to provide this exemption, gaming companies who want to establish a subscription model could still do so, and if the costs of supporting a server are higher than revenue, the server could still be turned off. The only difference is that consumers who purchased the game would no longer lose the ability to play the game on their own hardware or be forced to undertake illegal activity, just to play a game they already purchased.

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