



Petition for New Exemption Under 17 U.S.C. § 1201

Please submit a separate petition for each proposed exemption.

Note: Use this form if you are seeking to engage in activities not currently permitted by an existing exemption. If you are seeking to engage in activities that are permitted by a current exemption, instead of submitting this form, you may submit a petition to renew that exemption using the form available at <https://www.copyright.gov/1201/2018/renewal-petition.pdf>.

If you are seeking to expand a current exemption, we recommend that you submit both a petition to renew the current exemption, and, separately, a petition for a new exemption using this form 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 proposing the exemption.

Petitioner:

Electronic Frontier Foundation

Contact Information:

Mitchell L. Stoltz
Electronic Frontier Foundation
815 Eddy Street
San Francisco, CA 94109
(415) 436-9333
mitch@eff.org

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. DESCRIPTION OF PROPOSED NEW EXEMPTION

Provide a brief statement explaining the nature of the proposed new or expanded exemption. The information that would be most helpful to the Office includes the following, to the extent relevant: (1) the types of copyrighted works that need to be accessed; (2) the physical media or devices on which the works are stored or the services through which the works are accessed; (3) the purposes for which the works need to be accessed; (4) the types of users who want access; and (5) the barriers that currently exist or which are likely to exist in the near future preventing these users from obtaining access to the relevant copyrighted works.

Petitioners need not propose precise regulatory language or fully define the contours of an exemption class. Rather, a short, plain statement describing the nature of the activities the petitioners wish to engage in will be sufficient, as proponents will have the opportunity to further refine or expound upon their initial petitions during later phases of the rulemaking. The Office anticipates that in many cases petitioners will be able to adequately describe in plain terms the relevant information in a few sentences, or even a single sentence, as with the examples below.

Examples:

A proposed exemption for owners of 3D printers to circumvent technological protection measures on firmware or software in 3D printers to run the printers' operating systems to allow use of non-manufacturer-approved feedstock.

A proposed exemption for computer programs in tractors that use lockout codes to prevent farmers from repairing broken tractor parts.

A proposed expansion of the current exemption for motion pictures (including television programs and videos) for uses in documentary films. The expansion sought is to cover lawfully obtained copies of motion pictures contained on Blu-ray discs.

A. Proposed Exemption

The Electronic Frontier Foundation (“EFF”) petitions the Librarian to grant the following exemption to permit “jailbreaking” or “rooting” of smartphones and general-purpose portable computing devices:

Computer programs that enable smartphones and general-purpose portable computing devices to execute lawfully obtained software applications, where circumvention is accomplished solely for one or more of the following purposes: to enable interoperability of such applications with computer programs on the smartphone or device, to enable or disable hardware features of the smartphone or device, or to permit removal of software from the smartphone or device. For purposes of this exemption, a “general-purpose portable computing device” is a portable device that is primarily designed or primarily used to run a wide variety of programs rather than for consumption of a particular type of media content, is equipped with an operating system primarily designed for use in a general-purpose computing device, and is primarily designed to be carried or worn by an individual or used in a home.

This exemption expands and includes the exemption currently codified at 37 C.F.R. §201.40(b)(4) (Classes 16 and 17 in the sixth triennial rulemaking).

B. Introduction

Since 2010, the Librarian has granted exemptions to Section 1201(a)(1) for “jailbreaking” and “rooting” of smartphones, allowing those ubiquitous devices to be modified in important and valuable ways without permission from the manufacturer and wireless carrier. In 2015, the Librarian extended

ITEM B. DESCRIPTION OF PROPOSED NEW EXEMPTION (CONT'D)

this exemption to cover other mobile computing devices, including smartwatches and tablets. These prior exemptions reflect the importance of end users' control over their personal devices, the prominence and value of independent software development, and the positive impact of jailbreaking on the personal computing world.

Since 2015, the personal computing market has expanded in a new direction: home information appliances that respond to voice commands. These devices, such as the Amazon Echo series of products, the Google Home, and the forthcoming Apple HomePod, share key features of smartphones and tablets, including the use of iOS and GNU/Linux operating systems and the ability to run arbitrary third-party software. Like smartphones and tablets, they include access controls that prevent installation or removal of software. And like their older cousins, they already benefit from active third-party developer communities, who face legal uncertainty under Section 1201 in the absence of an exemption. As the personal computing world adapts to include these appliances, the exemption for jailbreaking should adapt as well.

C. Description Of Proposed New Exemption

1. The copyrighted works in question are computer programs that enable portable computing devices to execute other programs. These gatekeeper programs have various, sometimes overlapping, technical descriptions: operating systems, drivers, firmware, bootloaders, virtual machines, et cetera.
 2. The physical devices on which these works are stored and accessed are best described as general-purpose portable computing devices, characterized by their sale through retail channels, their portability, their use of general purpose operating systems such as GNU/Linux, iOS, Android, Windows Phone, and Windows 10 Mobile, and their utility for a wide variety of computing tasks.
 3. The purpose for which the works need to be accessed is to add new application software to a device, enable or disable features of the device's hardware (such as restricting Internet access or disabling a microphone), or removing unwanted applications from the device.
 4. Users who need to jailbreak or root devices include end users who want to add or remove functionality from those devices, developers who seek to write new software for the devices, and persons concerned about the security of their devices and data who seek to install fixes not offered (or not yet offered) by the manufacturer or Internet service provider.
 5. The barriers to these important activities include bootloader access controls that restrict the loading of alternative or modified operating systems, and operating system access controls that prevent the installation or removal of application software or prevent user control of hardware features such as a camera, microphone, or network connection.
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