

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

Item 1. Commenter Information

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This comment is filed by the Free Software Foundation, a charitable corporation founded in 1985. The Foundation is the largest single contributor to the GNU operating system (used widely today in its GNU/Linux variant). The Foundation's GNU General Public License is the most widely used free software license, covering major components of the GNU operating system and tens of thousands of other computer programs used on hundreds of millions of computers around the world.

Item 2. Proposed Class Addressed

Class 6: Audiovisual Works—Space-Shifting

Item 3. Statement Regarding Proposed Exemption

The GNU/Linux operating system has become one of the most widely used operating systems on the planet. The GNU System and the kernel Linux are called free software because users are free to study, share, and improve the software. Those who promote free software believe that controlling ones own computing should be a universal right.

Digital restrictions interfere with the ability to enjoy these freedoms. Circumventing such restrictions for any use should not come with the threat of legal sanction. The process of continually applying for exemptions under 17 U.S.C. 1201 is onerous and instead any circumvention for a non-infringing purpose should be permitted.

However, where exemptions are used to safeguard the public from these laws, it must be the case that exemptions should cover the sharing and distribution of software and instructions for circumventing access control technologies. Without this, exemptions are near useless, since it would require everyone who wants to act within their scope to write their own software to do so.

With regard to this particular exemption, all users have a legitimate right to circumvent controls on audiovisual works, regardless of the medium or the particular use involved. Limiting exemptions to particular users or to narrowly defined uses harms everyone, even those who may fall under existing exemptions. Any medium can degrade or fail over time. Devices that can access the work can likewise degrade, fail, or become no longer available. Regardless of the medium, whether it is optical or otherwise, users should have the right to transfer the works they own onto other media or devices in order to ensure continued access. Users should not fear legal consequences for simply trying to maintain control over the works they lawfully purchased. There should be no restriction on the ability to preserve a work in a more durable format or medium for any purpose. The exemption should extend to all audiovisual works and all users, as well as to the sharing of tools needed to make circumvention possible.

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