

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 12: Computer Programs—Repair

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 one's 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.

The ability to diagnose and repair hardware increasingly requires modifying or replacing the software found on those devices. In the past, free software advocates used the example of fixing a car when trying to explain why it is important that users be able to control and modify their software. But that example is perhaps no longer apt, as cars regularly come with a wide variety of software included, and repairing those cars often requires modifying or improving the software on them. The same is increasingly true of a wide variety of 'smart' devices. There are very few items on the market these days that do not come with some sort of software included, and repairing or diagnosing issues with that hardware generally involves dealing with that software in some way. Users should not have to check with the copyright office whenever they need to address an issue with a device they own. They also should be able to have others repair their devices, regardless of what the particular device is. This issue is so important that many states are advancing Right to Repair laws, which seek to further guarantee the right to fix anything that you own. The Copyright Office should do likewise and guarantee that users should not have to worry about legal repercussions simply for trying to fix or diagnose their own property. The exemption should extend to all works on all devices, and to all users, as well as to the sharing of tools needed to make circumvention possible.

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