

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 11: Computer Programs—Jailbreaking

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.

Users should have the right to install free software on any device that they own. Where technological restrictions inhibit installation of alternative software, there should be no legal repercussions for avoiding those technological measures. This issue is of paramount importance to the free software movement, as many devices still come with proprietary software installed by default. Without the ability to install free software on their devices, users are unable to use and modify their own software on the devices that they own. The Free Software Foundation's Respects Your Freedom certification program <<https://ryf.fsf.org>> certifies that users can buy devices that only come with and recommend free software. But many of the retailers are only able to achieve this standard by removing proprietary firmware on devices made by third parties and replacing it with free software. When exemptions are limited to particular devices, it limits the ability of retailers to offer other devices in a way that respects the rights of users. And for users who want to free their own devices, they shouldn't have to check a list from the Copyright Office to see whether it is permitted for that particular device. The exemption should extend to all works and all users, as well as to the sharing of tools needed to make circumvention possible.

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