

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 16: Computer Programs—Copyright License Investigation

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 Free Software Foundation is directly affected by restrictions on the ability to do copyright license enforcement research. The Foundation has conducted investigations and enforcement of copyright violations on free software packages for over thirty years, but that work is increasingly stymied by Digital Restrictions Management.

On average, we receive 186 reports each year of copyright violations on free software programs. Each of these violations must be investigated to verify that a violation of the Foundation's copyright did indeed occur. For the users that report these issues, simply discovering that free software is locked within a device can be a difficult task. Users often need to search the obfuscated form of the work to find hints that free software is included. Copyright violators are often hesitant to announce to the world that they are openly violating copyright, and endeavor to hide their wrongdoing. A similar situation occurred with Volkswagen hiding its emissions test violations behind technological measures <<https://www.defectivebydesign.org/epa-drm-drone>>. The scope of violations of the Foundation's copyright vastly exceeds the number of reports we receive each year, and Digital Restrictions Management plays a role in hiding those violations from users who would report the issues.

Once the Foundation receives a report and begins its investigation, we are often unable to confirm if our copyrighted work is actually on the device. Technology should never be permitted to hide copyright violations, and the law should never protect the use of technological measures in order to carry out violations of copyright. Users, advocates, and researchers should never fear punishment for simply trying to discover violations of free software licenses. 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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