



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.

<p>Petitioner: Electronic Frontier Foundation</p> <p>Contact: Cara Gagliano, Staff Attorney Electronic Frontier Foundation 815 Eddy St San Francisco, CA 94109 415 436 9333 cara@eff.org</p>
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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.

A. Proposed Exemption

Petitioner requests an exemption to enable circumvention of access controls applied to software and compilations of data, where circumvention is for the purpose of non-infringing repair, diagnosis, or modification of a software-enabled device.

B. Introduction

Software-enabled devices are ubiquitous in modern life. One consequence of this phenomenon has been limiting the ability of device owners to repair, diagnose, or modify their property, thanks in part to restrictions imposed by Section 1201(a)(1).

The Copyright Office recognized these concerns to some extent in the seventh triennial rulemaking, in which Petitioner requested the same exemption currently proposed. The Office granted Petitioner’s request as to diagnosis, maintenance, and repair of smartphones, home appliances, and home systems, but it declined to include other types of software-enabled devices, concluding that the factual record and legal analysis were insufficiently developed. The Office further declined to include lawful modification of a device or system as a permissible purpose for circumvention, again finding insufficient factual and legal justification in the record.

Petitioner intends to further develop the factual record and to expand on its legal analysis in this rulemaking period, including by providing evidence of the need for an exemption covering a broader range of devices and by more precisely defining—and supporting the inclusion of—“modification.” For example, Petitioner intends to present evidence that TPMs inhibit non-infringing modifications to consumers’ personally owned e-readers. Petitioner also intends to show, through individualized legal analyses, why the types of modification contemplated by the proposed exemption are likely to be non-infringing for a broad range of devices.

Devices that would be covered by the proposed exemption as “software-enabled devices” include, but are not limited to:

- The “Internet of Things” – devices connected to the Internet that primarily have a physical function or sense the physical world.
- Appliances – such as computerized refrigerators, toasters, and temperature control systems.
- Computer peripherals – such as printers, 3D printers, displays, or human interface devices.
- Computers, storage devices, and playback devices – such as desktop and laptop computers, tablets, wearable computers, phones, e-readers, video game consoles, and media devices.
- Cameras and recording devices – digital cameras for still photography, video cameras,

Item B. Description of Proposed New Exemption *(cont'd)*

- and audio recorders.
- Toys – computerized dolls or other toys.
- Vehicles – computerized boats or other vehicles for water use.
- Environmental automation systems – for the home, a commercial space, or other environment, controlling climate, doors, or elevators.
- Medical devices – such as hearing aids, insulin pumps, or ventilators.

C. Additional Information

(1) The types of copyrighted works that need to be accessed are software that affects the operation, repair, diagnosis, or modification of a device, and data compilations that reflect the operation of the device or inform repair, diagnosis, or modification efforts.

(2) Such works are typically contained on the device they control, though they may also be located on a diagnostic tool separate from the device, or on a device that controls other devices (such as the hub in a home automation system).

(3) The works need to be accessed for fair and non-infringing uses such as:

- Repair of defects, damage, wear, or other issues affecting the physical device or software.
- Diagnosis of unintended or undesired behavior, including behavior such as privacy intrusions or planned obsolescence that are intended by the manufacturer but objectionable to the customer.
- Modification in order to add new features, load the software of one's choice, disable undesired functionality, or customize the operation of the device to one's preferences.

(4) The types of users who want access range from individual device owners, to institutional device owners, to independent repairpersons.

(5) Access to the relevant copyrighted works is prevented by a variety of measures, including encryption.