UNITED STATES COPYRIGHT OFFICE

Petition for New Exemption Under 17 U.S.C. § 1201

8th Triennial Rulemaking

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/1201/2021/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.

Petitioner:
Hugo Campos, Member of the Coalition of Medical Device Patients and Researchers
hugooc@gmail.com
(415) 794-1567

Representative:
Jef Pearlman
Director, Intellectual Property & Technology Law Clinic
Kate McClellan
Law Student, Intellectual Property & Technology Law Clinic
USC Gould School of Law
jef@law.usc.edu
(213) 740-7613

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.

Petitioner is a member of a coalition of medical device patients and researchers who research, comment on, examine the safety of, and scrutinize the effectiveness of networked and personal medical devices. Petitioner's research requires access to a variety of networked medical devices. Petitioner also uses some of these devices to monitor and manage his health. With the assistance of the Berkman Klein Center ' s Cyber Law Clinic at Harvard Law School, the coalition requested and were granted an exemption for Class 27: Software Networked and Personal Medical Devices in the Sixth Triennial Proceeding (2015). In the Seventh Triennial Proceeding (2018), we successfully petitioned to renew the exemption, and we have again petitioned to renew this exemption during the current proceeding.

Along with coalition members Karen Sandler and Jay Radcliffe, Petitioner respectfully asks the Librarian of Congress to expand the current exemption for literary works consisting of compilations of data generated by implanted medical devices and corresponding personal monitoring systems to access personal data. See 37 C.F.R. § 201.40(b)(4). In particular, Petitioner requests that 1) the limitation to " wholly or partially implanted devices " be removed, permitting circumvention to access data from non-implanted devices and 2) to permit third parties to perform the circumvention, with permission, on behalf of the patient.

Patients need real-time access to their data from non-implanted medical and wellness devices and corresponding personal monitoring systems in much the same way they need access to their data from implanted devices. Many current and upcoming devices obtain medical data about a patient without the need to be fully or partially implanted in the body. For instance, smart watches can now track heart rate, skin temperature, and blood oxygen levels. See https://perma.cc/TGJ7-G9F9. Personal EKG monitors can provide real-time data on a patient ' s heart. See https://perma.cc/4NHM-XM9T. And connected, non-implanted glucose meters help diabetics react in real time to their blood sugar levels. See https://perma.cc/LK75-JGJD.

The current, limited exemption puts patients using these devices at an unnecessary disadvantage. Without direct access to their data, access may be significantly delayed or patients may find it difficult or impossible to combine it with data from other sources, either of which can adversely affect the patient ' s ability to manage their own personal health. And there is no relevant difference between implanted and non-implanted devices with respect to copyright.

There is also no need to restrict the exemption to require circumvention to be done by the patient. This restriction forces patients to become software experts in order to lawfully access their own medical data. The Copyright Office and Library of Congress have structured other exemptions so that the identity of the person doing the circumvention does not matter. They should do the same here and permit circumvention as long as it is done with the permission of the patient.

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