



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.

The Petition submitter is Software Freedom Conservancy (Conservancy), a not-for-profit organization that helps to promote, improve, develop, and defend Free and Open Source Software (FOSS)—software developed by volunteer communities and licensed for the benefit of everyone. Conservancy is the nonprofit home for dozens of FOSS projects representing well over a thousand volunteer contributors. Our communities maintain some of the most fundamental utilities in computing today, and introduce innovations that will shape how software will be created in the future.

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Contact Information:

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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 expansion of the current exemption for circumvention of technological protection measures on computer programs for the purpose of good-faith security research, 37 CFR § 201.40(b)(11). The expansion sought is to clarify that the definition of "good faith security research" in 37 CFR § 201.40(b)(11)(ii) includes good-faith testing, investigation, and/or correction of privacy issues (including flaws or functionality that may expose personal information) and permits the owner of the device to remove software or disable functionality that may expose personal information.

The types of copyrighted works that need to be accessed: computer programs on a lawfully acquired device or machine on which the computer program operates.

The physical media or devices on which the works are stored or the services through which the works are accessed: the hard drive, firmware, or RAM, or other permanent or temporary storage media of a computer or embedded computing device (including "internet-of-things" devices like IP-enabled doorbell cameras, baby monitors, and thermostats; smart phones and other portable computing devices; laptop and desktop computers; and networking devices such as routers).

The purposes for which the works need to be accessed: to (a) test for and investigate privacy issues such as functionality that inadvertently or deliberately exposes personally identifying information and other privacy-sensitive information to third parties, or to the device manufacturer; (b) protect the privacy of users of the class of devices or machines on which the computer program operates, or those who use such devices or machines; and (c) correct privacy issues on individual devices (e.g. by the owner of the device).

The types of users who want access: privacy and security researchers who investigate and publish information about privacy flaws in computing devices; and individual consumers and hobbyists who wish to prevent their private data from being disclosed by the devices they own.

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: firmware encryption schemes that prevent the investigation of software embedded in computing devices, as well as administrative access controls (such as developer passwords) that prevent access to programs.

ITEM B. DESCRIPTION OF PROPOSED NEW EXEMPTION (CONT'D)

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