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:
Summit Imaging, Inc.
15000 Woodinville-Redmond Rd. NE
Suite B800
Woodinville, WA 98072

Petitioner may be contacted through its counsel:
Marc Levy
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701 Fifth Ave., Suite 5400
Seattle, WA 98104
(206) 684-4811
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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 New Exemption

Petitioner requests an exemption under 17 U.S.C. § 1201(a)(1) to allow circumvention of technological measures applied to software programs and data files that are contained in and control the functioning of a computer-controlled medical device for the purpose of diagnosis, maintenance, or repair of such a device.

B. Introduction

Manufacturers of computer-controlled medical devices such as imaging equipment and ventilators typically employ technological measures (or what are alleged to be technological measures) to prevent owners of such devices or their chosen service providers from being able to diagnose, maintain, and repair them. Unless hospitals or other owners of medical devices purchase expensive service contracts from the manufacturer, they may be unable to repair their own equipment (or have it repaired by an independent service provider) without risking a lawsuit against them or their service provider for allegedly violating the anti-circumvention provisions of the Digital Millennium Copyright Act ("DMCA"). The threat of such litigation is real as petitioner itself along with a number of other independent services organizations are currently defending themselves against lawsuits by original equipment manufacturers ("OEMs") alleging that they have violated the DMCA in the course of providing their repair services.

The need for this exemption has been magnified by the current COVID-19 pandemic as hospitals have an urgent need to maintain and repair lifesaving equipment. While the need now is particularly urgent in light of the pandemic, the strong public interest in public health and positive health outcomes supports the implementation of this exemption generally.

C. Additional Information

(1) the types of works that need to be accessed

Software tools and other programs and data files (e.g. error logs) in which OEMs claim copyright used for diagnosing, maintaining, or repairing the device.

(2) the physical media or devices on which the works are stored or the services through which the works are accessed.

The software tools and other programs and data files in which OEMs claim copyright to which access is needed are typically contained on hard drives contained in the medical device.

(3) the purposes for which the works need to be accessed.

The software tools and other programs and data files in which OEMs claim copyright need to be accessed for fair and noninfringing uses under Sections 107 and 117 of the Copyright Act, including the diagnosis, repair, and maintenance of medical devices.

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

4) the types of users who want access.

The types of users who desire access include the hospitals and other owners of the medical devices and the persons they engage to provide service on their behalf, including independent service organizations.

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.

Medical device OEMs typically employ user-specific login credentials or security keys, among other measures, in order to try to prevent or hinder access to the software tools and other programs and data files in which they claim copyright needed for the diagnosis, repair, and maintenance of medical devices.