



# Petition to Renew a Current Exemption Under 17 U.S.C. § 1201

## 8th Triennial Rulemaking

Please submit a separate petition for each current exemption for which renewal is sought.

**NOTE:** Use this form if you want to renew a current exemption without modification. If you are seeking to engage in activities not currently permitted by an existing exemption, including those that would require the expansion of a current exemption, you must submit a petition for a new exemption using the form available at <https://www.copyright.gov/1201/2021/new-petition.pdf>.

If you are seeking to expand a current exemption, we recommend that you submit both a petition to renew the current exemption without modification using this form, and, separately, a petition for a new exemption 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 seeking renewal.

Petitioner:  
Institute of Scrap Recycling Industries, Inc.  
<http://www.isri.org/>

Counsel for Petitioner:  
Phil Malone  
Juelsgaard IP and Innovation Clinic  
Mills Legal Clinic at Stanford Law School  
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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. IDENTIFY WHICH CURRENT EXEMPTION PETITIONERS SEEK TO RENEW

Check the appropriate box below that corresponds with the current temporary exemption (see **37 C.F.R. § 201.40**) the petitioners seek to renew. Please check only one box. If renewal of more than one exemption is sought, a separate petition must be submitted for each one.

### **Motion Pictures** (including television programs and videos):

- Excerpts for educational purposes by college and university or K-12 faculty and students
- Excerpts for educational purposes by faculty in massive open online courses (“MOOCs”)
- Excerpts for educational purposes in digital and literacy programs offered by libraries, museums, and other nonprofits
- Excerpts for use in nonfiction multimedia e-books
- Excerpts for use in documentary filmmaking or other films where use is in parody or for a biographical or historically significant nature
- Excerpts for use in noncommercial videos
- For the provision of captioning and/or audio description by disability services offices or similar units at educational institutions for students with disabilities

### **Literary Works:**

- Literary works distributed electronically (*i.e.*, e-books), for use with assistive technologies for persons who are blind, visually impaired, or have print disabilities
- Literary works consisting of compilations of data generated by implanted medical devices and corresponding personal monitoring systems, to access personal data

### **Computer Programs and Video Games:**

- Computer programs that operate cellphones, tablets, mobile hotspots, or wearable devices (*e.g.*, smartwatches), to allow connection of a new or used device to an alternative wireless network (“unlocking”)
- Computer programs that operate smartphones, tablets and other all-purpose mobile computing devices, smart TVs, or voice assistant devices to allow the device to interoperate with or to remove software applications (“jailbreaking”)
- Computer programs that control motorized land vehicles, including farm equipment, for purposes of diagnosis, repair, or modification of the vehicle, including to access diagnostic data
- Computer programs that control smartphones, home appliances, or home systems, for diagnosis, maintenance, or repair of the device or system
- Computer programs for purposes of good-faith security research
- Computer programs other than video games, for the preservation of computer programs and computer program-dependent materials by libraries, archives, and museums
- Video games for which outside server support has been discontinued, to allow individual play by gamers and preservation of games by libraries, archives, and museums (as well as necessary jailbreaking of console computer code for preservation uses only), and discontinued video games that never required server support, for preservation by libraries, archives, and museums
- Computer programs that operate 3D printers, to allow use of alternative feedstock

## ITEM C. EXPLANATION OF NEED FOR RENEWAL

Provide a brief explanation summarizing the continuing need and justification for renewing the exemption. The Office anticipates that petitioners may provide a paragraph or two detailing this information, but there is no page limit. While it is permissible to attach supporting documentary evidence as exhibits to this petition, it is not necessary. Below is a hypothetical example of the kind of explanation that the Office would regard as sufficient to support renewal of the unlocking exemption. The Office notes, however, that explanations can take many forms and may differ significantly based on the individual making the declaration and the exemption at issue.

The Institute of Scrap Recycling Industries, Inc. (ISRI) is the "Voice of the Recycling Industry." ISRI and its 21 chapters represent approximately 1,300 companies operating in nearly 4,000 locations in the U.S. and 41 countries worldwide that process, broker, and consume scrap commodities, including metals, paper, plastics, glass, rubber, electronics, and textiles. With headquarters in Washington, DC, ISRI provides education, advocacy, safety and compliance training, and promotes public awareness of the vital role recycling plays in the U.S. economy, global trade, the environment and sustainable development. Generating \$117 billion annually in U.S. economic activity, the scrap recycling industry provides more than half a million Americans with good jobs. For more information about ISRI, please visit [ISRI.org](http://ISRI.org).

ISRI has been involved in the section 1201 triennial proceedings for several cycles now. Previously, ISRI filed initial petitions for exemptions, along with comments and reply comments, focused on unlocking lawfully-acquired wireless devices to be used on different wireless carriers. Before 2018, this exemption was limited to used devices (i.e., those previously activated on a wireless carrier). During the last triennial proceeding, this exemption was expanded to include new devices (i.e., those that are yet to be activated). The 2018 Final Rule uses the term "lawfully acquired wireless devices" to include both new and used wireless devices. ISRI has detailed the adverse effects caused by the threat of § 1201 enforcement and experienced by wireless device owners, including individual consumers, resellers, and recyclers.

Three years later, ISRI members continue to purchase or acquire donated cell phones, tablets, and other wireless devices no longer needed by their original owners, and try to make the best possible use of them through resale or recycling. And, three years later, wireless carriers still lock devices to prevent them from being used on other carriers. ISRI members continue to receive devices from their prior owners in a locked state. While there are variations in which devices are locked and when or if carriers are willing to unlock them, the overall landscape has not changed in any way material to this exemption. Unlocking those devices implicates legitimate copyright interests no more now than three years ago. And the exemption continues to be necessary to allow device owners to make lawful uses of the devices they own, whether they are an individual with a single phone or a reseller desiring to bulk unlock their devices.

Given the continued, widespread sale of carrier-locked wireless devices, the continued desire of consumers and resellers to unlock the wireless devices they own, and the lack of material change in the copyright interests (or lack thereof) at issue, ISRI respectfully requests that the exemption be renewed. Additionally, ISRI requests that, should any party submit opposition comments purporting to introduce new, meaningful information and should the Register "decline[] to recommend for renewal under the streamlined process," proponents of the exemption continue to be able to rely on the prior record and only be required to address the new information rather than being forced to pursue the exemption from scratch.

**ITEM C. EXPLANATION OF NEED FOR RENEWAL** (CONT'D)

[Empty box for explanation of need for renewal]

## ITEM D. DECLARATION AND SIGNATURE

The declaration is a sworn statement made under penalty of perjury, and must be signed by one of the petitioners named above.

I declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. Based on my own personal knowledge and experience, I have a good faith belief that but for the above-selected exemption's continuation during the next triennial period (October 2021 – October 2024), technological measures controlling access to relevant copyrighted works are likely to diminish the ability of relevant users to make noninfringing uses of these works, and such users are likely to rely upon the above-selected exemption during the next triennial period.
2. To the best of my knowledge, there has not been any material change in the facts, law, or other circumstances set forth in the prior rulemaking record (available at <https://www.copyright.gov/1201/2018>) that originally demonstrated the need for the above-selected exemption, such that renewal of the exemption would not be justified.
3. To the best of my knowledge, the explanation provided in Item C above is true and correct, and supports the above statements.

### Name/Organization:

*If the petitioner is an entity, this declaration must be signed by an individual at the organization having appropriate personal knowledge.*

William H. Johnson, Chief Lobbyist, Institute of Scrap Recycling Industries, Inc.

### Signature:

*This declaration may be signed electronically (e.g., "/s/ John Smith").*

/s/ William H. Johnson

### Date:

7/22/2020