



# 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.

Software Preservation Network

represented by:

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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.

I, Kendra Albert, submitter of record, represent the Software Preservation Network ("SPN") and work with the Library Copyright Alliance ("LCA"), two national organizations that preserve digital heritage by making out-of-commerce software accessible, in support of research, teaching and learning. SPN consists of archivists, librarians, scholars, technologists, and legal experts, committed to establishing and retaining access to software (including video games), which would become inaccessible without careful and conscientious stewardship. LCA consists of three major library associations (the American Library Association, the Association of Research Libraries, and the Association of College and Research Libraries), and was established in order to safeguard the interests of librarians and archivists in the realm of copyright law.

SPN and LCA have had intimate engagement with the §1201 process, with participation in the DMCA rulemaking dating back to 2016 and 2000 respectively. During the last triennial rulemaking, SPN and LCA were granted their requested exemption, allowing the important work of preservationists and archivists to continue. The Library of Congress also noted that this exemption is consistent with previous exemptions granted in 2003 and 2006, permitting circumvention of access controls on computer and video games that have become obsolete. I have personally been involved in the last two triennial rule-makings, and have successfully advocated for exemptions and extensions for both SPN and LCA.

The last triennial rulemaking has expanded the work that SPN, LCA and their affiliates can do to preserve software. For example, the current SPN program Fostering Communities of Practice ( " FCoP " ) which spearheads independent emulation and preservation projects in various museums and archives relies heavily on the current status of the software exemption. This project, coordinated among six major museums and universities, including the University of Arizona, the University of Illinois, the University of Virginia, and the Guggenheim Museum, supports archivists and researchers engaged in emulation and preservation work that often requires bypassing DRM associated with out-of-commerce software in library collections and archives. In one project, from late 2019, researchers at UVA designed a project in order to access the "Peter Sheeran papers" a collection of drawings and plans from a local Charlottesville architecture firm. Without the most recent exemption for archives and libraries, the outdated Computer Aided Design ( " CAD " ) software used to create many of the designs in the Sheeran papers may have remained inaccessible to researchers, rendering the designs themselves inaccessible, too. Another case study comes from the Living Computers Museum + Labs a SPN affiliate based in Seattle, Washington, which educates students and researchers on technology and software issues. Last July (2019), the museum launched a program about the "Middle Ages of Computing" an exhibition that relied heavily on software images and custom hardware emulators to create a hands-on experience with vintage computing technology, which would have been legally higher-risk absent the safety provided by the exemption.

Without the current §1201 exemption, research and teaching facilitated by projects like these would be slowed by additional legal hurdles. Librarians and archivists would face significant legal barriers to accessing certain outdated forms of software, and the research and preservation of much of this important material would be put on hold indefinitely, for fear of possible legal action. Therefore, consistent with the Library's reasoning in the 2018 triennial rulemaking procedure, the §1201 exemption protecting computer programs by libraries, archives, and museums should be extended for the next three years.

**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.*

Software Preservation Network

### Signature:

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

s/ Kendra Albert

### Date:

July 22, 2020