



# 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.

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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.

Auto Care Association (“Auto Care”) is a national trade organization of 3,000 members representing more than 150,000 independent businesses that manufacture, distribute, and sell motor vehicle parts, accessories, tools, equipment, materials, and supplies, and perform vehicle service and repair.

Whereas in the past a repair shop or car owner could fix or improve vehicle performance solely by mechanical adjustments, many of those functions in modern automobiles are controlled by software embedded in electronic modules throughout the car. It is not uncommon that a single car will have 50 or more such software controlled modules. A repair shop must access vehicle software in order to restore and adjust vehicle functionality and to offer upgrades and aftermarket products, in lawful competition with the manufacturer that originally sold the vehicle. Many of these software modules are protected using technological measures that prevent access to the software, and thereby prevent our members from diagnosing, maintaining, and repairing that vehicle part and the overall operation of the vehicle.

Unless this exemption is renewed, the software measures manufacturers deploy for the purpose of controlling access to vehicle software will prevent Auto Care members from lawfully assisting consumers in the maintenance, repair, and upgrade of their vehicles. In Auto Care’s view, such measures generally are not deployed to prevent copyrighted content from copying. Rather, motor vehicle manufacturers adopted these technological protection measures intending to hinder access by independent repair shops to the software that is necessary to car repair. Moreover:

- This software prevents innovative competitors from adding new software functionality that interoperates with the existing software.
- This software walls off access to non-copyrightable parameters and functions that must be altered for a car owner to perform the work necessary to improve or optimize vehicle performance.
- This software prevents companies that produce diagnostic tools for the independent auto care industry from copying vehicle software for the purpose of reverse engineering the vehicle systems to ensure interoperability with their own tools.

Renewal of this exemption is also necessary to afford consumers the benefits of marketplace competition, which they expect in every other sector. Following expiration of a new vehicle warranty, more than 70 percent of car owners who patronize repair shops rely on independent repair shops over dealerships. In the absence of competition from independent repair and car optimization/customization businesses, auto manufacturers and dealers would be able to charge monopoly prices for providing products and services after warranties have expired.

Auto Care is a signatory to the January 15, 2014 “Memorandum of Understanding” (“MOU”) with automotive manufacturers, which facilitates access by car owners and independent repair facilities to the same diagnostic and repair information that a manufacturer makes available to a dealer. However, the cost of acquiring hardware and software tools pursuant to the MOU may be prohibitively expensive for many smaller shops; and the delay in availability of these tools may deprive independent repair businesses of the opportunity to timely serve customer needs.

The exemption also is needed for consumers who wish to repair their own cars. Approximately 20 percent of American consumers buy automotive parts and products to maintain and repair their own vehicles. The economic issues related to COVID-19 have increased the importance to motor vehicle owners of being able to perform diagnostic, repair, and maintenance work themselves. The exemption provides the only cost-effective way for these consumers to perform their own maintenance and repairs where circumvention of a technological protection measure is needed to access vehicle software controls.

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

Given the continuing trend toward the use of software to perform and control motor vehicle functions, and the implementation of technological measures to prevent independent repair shops and consumers from accessing that software, Auto Care submits that the exemption remains necessary for the next triennial period.

## 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.*

Aaron Lowe, Auto Care Association

**Signature:**

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

/s/ Aaron Lowe

**Date:**

July 21, 2020