



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.

The Motor & Equipment Manufacturers Association (MEMA)
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Contact:
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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.

MEMA is the nation's leading trade association for motor vehicle parts suppliers that manufacture new original equipment (OE) and aftermarket parts, components, and systems for use in passenger and commercial vehicles.¹ MEMA represents over 1,000 members through four divisions: Automotive Aftermarket Suppliers Association (AASA); Heavy Duty Manufacturers Association (HDMA); MERA The Association for Sustainable Manufacturing; and, Original Equipment Suppliers Association (OESA).

On behalf of AASA and MERA,^{2, 3} MEMA supports renewal of the temporary exemption for computer programs that control motorized land vehicles for purposes of diagnosis, repair, or modification of the vehicle. The current version of the exemption reflects a careful and thoughtful balance between consumer safety, protection of intellectual property, and protection of consumer choice in the automotive aftermarket, and is a testament to the success of the sixth and seventh triennial rulemakings.

The Copyright Office first considered a temporary exemption for diagnosis, repair, or modification of vehicle computer programs during the sixth triennial rulemaking. MEMA opposed the exemption at the time due to concerns about how such an exemption would affect vehicle safety. In response, the Copyright Office limited the exemption, allowing circumvention only to the extent that it does not violate applicable safety and environmental standards.

While MEMA was satisfied that the more limited exemption addressed its safety and environmental concerns, it noted during the seventh triennial rulemaking that the exemption still did not strike the right balance between protection of intellectual property and consumer choice because it permitted only the "authorized owner of the vehicle" to access the relevant computer programs. Given that most diagnostic and repair work is conducted by skilled professionals--whether at dealerships or at independent automotive repair shops--MEMA noted that limiting the exemption's beneficiaries to only "authorized owners," while excluding third party's acting on behalf of such owners, meant that most consumers would be unable to benefit from the exemption. MEMA therefore recommended renewing the exemption for diagnosis, repair, and modification, but with appropriate modifications that would make it easier for consumers to have their vehicles serviced by third parties. The Copyright Office agreed, issuing the current version of the exemption that broadened the scope of exemption beneficiaries and allows third parties, such as technicians at independent auto repair shops, to access computer software on behalf of consumers for purposes of diagnosis, repair, or modification of their vehicles.

The current exemption therefore reflects a delicate balance between the key principles of consumer safety, protection of intellectual property, and consumer choice that was achieved over two rounds of DMCA triennial rulemaking proceedings. Over the last three years, MEMA's membership has seen firsthand that the exemption is helping protect consumer choice and a competitive market, while mitigating risks to intellectual property and vehicle safety. For these reasons, MEMA urges the Copyright Office to renew the exemption for another three years.

¹ MEMA represents vehicle suppliers which are key innovators, developing and manufacturing a wide range of advanced, transformative technologies that enable safer, smarter, and more efficient vehicles. In total, vehicle parts manufacturers represent the largest sector of manufacturing jobs in the United States with over 871,000 direct jobs in all 50 states generating 2.4 percent of U.S. GDP.

² AASA is the division of MEMA that represents suppliers that manufacture parts, components, and materials for use in the automotive aftermarket industry. Aftermarket suppliers ensure that quality parts and service choices are available to the 281 million vehicles currently on our nation's roads. Suppliers are the foundation of a vibrant aftermarket industry, which employs over 4 million Americans across parts manufacturers, motor vehicle repair facilities, and distribution and service providers. Also, the independent aftermarket in the U.S. currently serves around 70 percent of vehicle maintenance and repairs.

³ MERA - The Association for Sustainable Manufacturing is the remanufacturing and sustainability division of MEMA. With roots in the transportation industry, MERA represents the interests of the broader remanufacturing community across multiple industry sectors. The organization is a network of manufacturers, suppliers, universities, and professional services firms that promotes the economic, environmental, and product performance benefits of remanufacturing and similar forms of sustainable manufacturing. MERA is also the home of Manufactured Again Certification, where new manufacturing and sustainable manufacturing are held to the same international quality standards.

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.

The Motor & Equipment Manufacturers Association (MEMA)

Signature:

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

/s/ Ann Wilson
Senior V.P., Government Affairs, MEMA

Date:

7/22/20