

UNITED STATES COPYRIGHT OFFICE



## Long Comment Regarding a Proposed Exemption Under 17 U.S.C. § 1201

*This is a Word document that allows users to type into the spaces below. The comment may be single-spaced but should be in at least 12-point type. The italicized instructions on this template may be deleted.*

*Please submit a separate comment for each proposed class.*

**NOTE:** *This form must be used in all three rounds of comments by all commenters not submitting short-form comments directly through Regulations.gov, whether the commenter is supporting, opposing, or merely providing pertinent information about a proposed exemption.*

*When commenting on a proposed expansion to an existing exemption, you should focus your comments only on those issues relevant to the proposed expansion.*

Check here if multimedia evidence is being provided in connection with this comment.

### ITEM A. COMMENTER INFORMATION

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**About AHAM:** AHAM represents manufacturers of major, portable and floor care home appliances, and suppliers to the industry. AHAM's membership includes over 150 companies throughout the world. In the U.S., AHAM members employ tens of thousands of people and produce more than 95% of the household appliances shipped for sale. The factory shipment value of these products is more than \$30 billion annually. The home appliance industry, through its products and innovation, is essential to U.S. consumer lifestyle, health, safety, and convenience. Through its technology, employees and productivity, the industry contributes significantly to U.S. jobs and economic security. Home appliances also are a success story in terms of energy efficiency and environmental protection. New appliances often represent the most effective choice a consumer can make to reduce home energy use and costs.

### ITEM B. PROPOSED CLASS ADDRESSED

Computer Programs—Repair of Devices Designed Primarily for Use by Consumers

Proposed Class 5: Computer Programs—Repair

**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 under 17 U.S.C. § 1201(a)(1). NOTE: No other advisory statement will be given in connection with this submission. Please keep this statement and refer to it if we communicate with you regarding this submission.

## **ITEM C. OVERVIEW**

The Association of Home Appliance Manufacturers (“AHAM”) appreciates the opportunity to provide comment to the Copyright Office in response to the U.S. Copyright Office, Library of Congress’ Notice of Proposed Rulemaking on Exemptions to Permit Circumvention of Access Controls on Copyrighted Works filed under the Digital Millennium Copyright Act (“DMCA”), Docket No. 2023-5; 88 Fed. Reg. 72013 (Oct. 19, 2023).

The United States Copyright Office (the “Copyright Office”) is considering whether it should recommend to the Librarian of Congress renewing exemptions to the Digital Millennium Copyright Act that were granted during the eighth triennial rulemaking, and whether it should recommend granting proposals for additional exemptions that control access to copyrighted content. Specifically of interest to AHAM, the Copyright Office seeks comment whether the Librarian of Congress renew and expand temporary exemptions to the DMCA prohibition against the circumvention of technology protection measures and on consumer’s right to repair their own product. AHAM objects any exemptions that would inhibit manufacturers’ ability to use TPMs to protect consumers from a cybersecurity and privacy perspective.

## **ITEM D. TECHNOLOGICAL PROTECTION MEASURE(S) AND METHOD(S) OF CIRCUMVENTION**

### **ITEM E. ASSERTED ADVERSE EFFECTS ON NONINFRINGEMENT USES**

Appliance manufacturers know how much consumers rely on their products to make their lives easier and more comfortable. Thus, manufacturers work hard to make appliances that last longer and perform better and to ensure their customers are satisfied not only at the time of purchase, but throughout a product’s useful lifetime. Accordingly, manufacturers have a vested interest in ensuring repairs are accessible, reliable, and safe. Last year, the State of California enacted the Right to Repair Act. AHAM supports repair access for consumers so long as those repairs are safe for consumers and do not violate intellectual property protections. California’s Right to Repair Act protects safety and IP and thus, AHAM supports its provisions both in California and elsewhere. We advocate for other states that are interested in repair access legislation to harmonize with California requirements to ensure a consistent landscape nationwide.

In joint comments from the United States Department of Justice and Federal Trade Commission (Agency Joint Comments) regarding the Copyright’s proposed renewed and proposed new exemptions to permit circumventions of access controls on copyrighted works, the agencies argued that repair restrictions can reduce consumer choice and can contribute to environmental and electronic waste when they reduce the useful lifespan of products. The Agency Joint Comments also suggest that repairing old products is better for the environment than purchasing new ones.

AHAM notes in response that the issues are complex and not all products are the same. For home appliances, purchasing a new appliance is often the most effective choice a consumer can make to reduce impact on the environment in terms of energy efficiency and sustainability. Life Cycle Analyses of home appliances consistently show that the most significant environmental impact, **by far**, is due to the energy consumed during their useful life, i.e., when the appliances are actually used in the home. And because new appliances often offer higher levels of efficiency, it

is not necessarily true that keeping a home appliance for longer is better for the environment. There is more to the picture.

### **Technological Protection Measures**

Particularly relevant to the Copyright Office's proposal to renew and issue new exemptions related to access controls on copyrighted works is the issue of technological protection measures (TPMs).

The Joint Agency Comments assert that manufacturers of software-enabled devices use a range of restrictive practices to cut off the ability to do a "DIY" or third-party repair, such as limiting the availability of parts and tools, imposing software "locks." They argue that TPMs have the potential to cause anticompetitive effects when there are no alternative practicable means of accessing information necessary to repair equipment.

The Joint Agency comments, and other comments on the docket seeking these exclusions, oversimplify the issue and are not consistent with actual repair scenarios. Cybersecurity and privacy are top of mind for appliance manufacturers, including in their repair as home appliances have smart and/or connected functionality that involve safety of the consumer and the product. Manufacturers provide cybersecurity through branded control firmware installed in the appliance that interacts with both physical and software components. Home appliance manufacturers incorporate TPMs, or digital locks, in their appliances to protect the product and the consumer, physically and online. TPMs in appliances are digital and physical in configuration, but their use in the operation of appliances are dependent on the model and type. Whether the product is WIFI connected or not is also a factor. Installed firmware interacts with appliances' electronic, electrical, mechanical and logical segments and are in physical and digital configurations.

1. Physical Configuration TPMs: protects appliance actual physical structure and physical safety.
2. Digital configuration TPMs: protect appliance firmware, software, programming settings and configuration parameters.

When it comes to repair, AHAM members indicated servicers may have to access TPMs to diagnose a problem with an appliance, which may not be apparent upon the initial assessment. Accessing TPMs can involve using a diagnostic tool to connect to the appliance to understand where the problem lies. In most cases, further access to TPMs, including circumvention, is not needed. According to AHAM's survey, almost all repairs are mechanical in nature, requiring repair or replacement of physically damaged parts. **There are no repair activities that would require the circumvention of installed TPMs, even in rare cases where electrical components (i.e. circuit boards) containing firmware are physically replaced or repaired.** TPMs may, however, need to be accessed for software updates or corrections.

There is a difference between *accessing* TPMs and *circumventing* TPMs. Product safety and cybersecurity (product operation and personal information) are at risk with any type of circumvention of TPMs. With almost all certainty, product safety, cybersecurity and personal information are at risk with the circumvention of TPMs. A servicer or consumer without proper

training and instruction to access TPMs and attempting to access appliances' firmware can lead to unknowingly or knowingly:

1. Rendering the appliance unresponsive to certain operations, including most importantly, critical operations that prevent damage to the appliance or the area in the home where that appliance is located. TPMs protect critical safety actions such as switching to safe mode or shutdown to prevent further damage, automatically draining water from a dishwasher or clothes washer, or tripping the connected circuit breaker if needed.
2. Causing the appliance to "lock up" because it will receive conflicting operational commands from different components.
3. Leaving consumer data profiles and data transfers unsecured, making personal information and appliance operation commands vulnerable to outside sources, specifically malware and/or hackers.

In response to a survey, AHAM members indicated that, as part of their service agreement and orientation, affiliated servicers are taught about appliances' TPM firmware and how to interact with them to perform repairs, including properly and safely accessing TPMs without compromising security.

For all these reasons, AHAM would object to any exemptions that would inhibit manufacturers' ability to use TPMs to protect consumers from a cybersecurity and privacy perspective.