UNITED STATES COPYRIGHT OFFICE

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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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 am a staff attorney at the Electronic Frontier Foundation, a nonprofit organization that defends civil liberties in the digital world. Founded in 1990, EFF champions user privacy, free expression, and innovation. EFF has taken an active role in policy debates and litigation concerning Section 1201 of the DMCA since the law's passage, and has participated in seven of the eight triennial exemption rulemaking cycles.

In the 2018 rulemaking, EFF successfully petitioned for an exemption covering circumvention of access controls in smartphones, home appliances, or home systems, for diagnosis, maintenance, or repair. Through my work, I have personal knowledge of the continuing need for this exemption.

Manufacturers of these devices continue to implement technological protection measures that inhibit lawful repairs, maintenance, and diagnostics, and they show no sign of changing course. Just this past September, for instance, the Association of Home Appliance Manufacturers and other industry groups submitted comments to the FTC defending their continued use of TPMs that must be circumvented to repair hardware components.[1]

With respect to home systems, smart-speaker manufacturer Sonos announced this year that it would no longer provide software updates for certain products sold between 2006 and 2015.[2] Sonos informed device owners that as a result, "access to services and overall functionality of your sound system will eventually be disrupted." Sonos presented customers with two options: either keep using your unsupported device (while you still can, anyway) or buy a new one from Sonos.[3] But device owners should have a third option, too: attempt to repair any disrupted functionality on their own or with third-party assistance, even if that means circumventing TPMs.

For smartphones, TPMs continue to interfere with legitimate repairs such as replacing a broken home button on an iPhone. As iFixit's Craig Lloyd explained in a 2019 guide to iPhone home button issues, iPhone owners who replace broken home buttons will lose Touch ID functionality unless they can circumvent a TPM that pairs the home button to the phone's logic board—or pay Apple up to $400 to make the repair for them.[4] The article does not state whether anyone has successfully circumvented that TPM, but we can be sure that failing to renew this exemption will impede any attempts to do so.

Just as in 2018, device owners and independent repair technicians need this exemption to prevent manufacturers from leveraging copyright to command a monopoly over repair services and induce consumers to purchase new devices rather than repairing ones they already have. The need for this exemption is only more compelling in light of the global public health crisis, as consumers are faced with business closures and supply-chain disruptions.

This exemption is justified for all the same reasons that it was in the 2018 Rulemaking. EFF therefore respectfully requests renewal of the exemption for diagnosis, maintenance, and repair of smartphones, home appliances, and home systems.

[1] https://www.regulations.gov/document?D=FTC-2019-0013-0075
[2] https://blog.sonos.com/en/end-of-software-updates-for-legacy-products/
[3] https://blog.sonos.com/en/end-of-software-updates-for-legacy-products/
[4] https://www.ifixit.com/News/32887/what-to-do-if-your-iphones-home-button-stops-working

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.

Cara Gagliano
Electronic Frontier Foundation

Signature:

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

/s/ Cara Gagliano

Date:

July 22, 2020