



Petition for New Exemption Under 17 U.S.C. § 1201

8th Triennial Rulemaking

Please submit a separate petition for each proposed exemption.

NOTE: Use this form if you are seeking to engage in activities not currently permitted by an existing exemption. If you are seeking to engage in activities that are permitted by a current exemption, instead of submitting this form, you may submit a petition to renew that exemption using the form available at <https://www.copyright.gov/1201/2021/renewal-petition.pdf>.

If you are seeking to expand a current exemption, we recommend that you submit both a petition to renew the current exemption, and, separately, a petition for a new exemption using this form 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 proposing the exemption.

Petitioners:

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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. DESCRIPTION OF PROPOSED NEW EXEMPTION

Provide a brief statement explaining the nature of the proposed new or expanded exemption. The information that would be most helpful to the Office includes the following, to the extent relevant: (1) the types of copyrighted works that need to be accessed; (2) the physical media or devices on which the works are stored or the services through which the works are accessed; (3) the purposes for which the works need to be accessed; (4) the types of users who want access; and (5) the barriers that currently exist or which are likely to exist in the near future preventing these users from obtaining access to the relevant copyrighted works.

Petitioners need not propose precise regulatory language or fully define the contours of an exemption class. Rather, a short, plain statement describing the nature of the activities the petitioners wish to engage in will be sufficient, as proponents will have the opportunity to further refine or expound upon their initial petitions during later phases of the rulemaking. The Office anticipates that in many cases petitioners will be able to adequately describe in plain terms the relevant information in a few sentences, or even a single sentence, as with the examples below.

iFixit is an international, open-source, online repair manual for everything. iFixit represents a global community of makers, fixers, refurbishers, tinkerers, and repair professionals. In 2019, iFixit helped over 120 million people repair everything from mobile phones to cars and tractors. Renewal and expansion of these exemptions is necessary to preserving ownership rights, maintaining a consumer's right to repair, and enabling iFixit to continue helping customers repair the devices they own.

Repair.org represents the combined interests of repair professionals in the technology aftermarket. Its members span the interests of individuals, non-profits, and for-profits engaged in the repair, resale, recycling, and re-commerce of technology driven equipment. Its mission is to advocate for repair-friendly policies, regulations, statutes and standards at the federal, state and local level.

Petitioners iFixit and Repair.org and their representatives have participated in multiple previous DMCA triennials, filing petitions and comments and testifying at hearings. Most recently, Petitioners joined others in this proceeding to request renewal of the exemption for "computer programs that control smartphones, home appliances, or home systems, for diagnosis, maintenance, or repair of the device or system."

Petitioners respectfully request an expanded exemption covering computer programs that control any lawfully acquired devices to permit the diagnosis, repair, maintenance, or modification of those devices.

The Register and Librarian should not create limited categories of devices that are excluded from or included in the exemption based on non-copyright concerns or arbitrary features of those devices. Owners of devices should be able to lawfully engage in noninfringing repair of their property regardless of whether they wear it, drive it, or type on it.

The number and variety of devices that include TPM-restricted software that must be accessed for the owner to repair them continues to expand at a staggering rate. Hearing aids, commercial HVAC systems, and PBX phone systems all contain software that can be locked down to prevent owners from repairing the devices they own. Each of these examples might fall outside the existing exempt categories. Does it make sense to block repair of a hearing aid if it's not an "appliance" or a phone system because it's in an office instead of an apartment? Each of these is a device that is owned by a party that may need to access the software in order to repair the device, and that repair should be permitted.

Elimination of these categories would also remove some of the ambiguity they cause. For example, is smart lighting or a hearing aid a "home appliance" or "home system"? Does the existing exemption cover a consumer refrigerator if it is used in an industrial setting or business instead of at "home"? These categories create confusion without being linked to any copyright-related distinction.

Over the next three years, there will no doubt be new devices that don't also fit cleanly into existing categories and wouldn't fall neatly into new categories that might be invented during this proceeding. Technology from smart home refrigerators will be integrated into industrial models. Automation technologies pioneered in smart homes are moving into office environments. Hybrid devices will be built and create entirely new categories. And owners should have an equal right to lawfully repair those models and devices.

ITEM B. DESCRIPTION OF PROPOSED NEW EXEMPTION *(CONT'D)*

We also recognize that the proposed exemption overlaps with at least two existing ones: 1) 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; and 2) computer programs that control smartphones, home appliances, or home systems, for diagnosis, maintenance, or repair of the device or system. See 37 C.F.R. § 201.40(b)(9) & (10). This is not an accident; rather than continuing to create categories of devices based on reasons unrelated to copyright, the categories should be eliminated.

Finally, this exemption should not be conditioned on compliance with non-copyright-related laws and regulations. The DMCA is not a catch-all extra punishment for violation of EPA regulations or breach of contract, and an exemption is does not immunize people from punishment for violating other laws and regulations. If someone were to circumvent TPMs in order to repair a product they owned and also to violate other laws, they would remain liable for those activities even with an exemption in place. The exemption should focus solely on permitting noninfringing diagnosis, maintenance, repair, and modification.