

Short Comment Regarding a Proposed Exemption Under 17 U.S.C. 1201

Item 1. Commenter Information

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This comment is filed by the Free Software Foundation, a charitable corporation founded in 1985. The Foundation is the largest single contributor to the GNU operating system (used widely today in its GNU/Linux variant). The Foundation's GNU General Public License is the most widely used free software license, covering major components of the GNU operating system and tens of thousands of other computer programs used on hundreds of millions of computers around the world.

Item 2. Proposed Class Addressed

Proposed Class 19: Jailbreaking—Video Game Consoles.

Item 3. Statement Regarding Proposed Exemption

The GNU/Linux operating system has become one of the most widely used operating systems on the planet. The GNU System and the kernel Linux are called free software, because users are free to study, share and improve the software. Those who promote free software believe that controlling ones own computing should be a universal right.

Digital restrictions interfere with the ability to enjoy these freedoms. Circumventing such restrictions for any non-infringing use should not come with the threat of legal sanction. The process of continually applying for exemptions under 17 U.S.C. 1201 is onerous and instead any circumvention for a non-infringing purpose should be permitted.

However, where exemptions are used to safeguard the public from these laws, it must be the case that exemptions should cover the sharing and distribution of software and instructions for circumventing access controls technologies. Without this, exemptions are near useless, since it would require everyone who wants to act within their scope to write their own software to do so.

Video game consoles fully-fledged computers capable of running alternative operating systems and user-installed software. The Sony Playstation 3 was initially marketed with a feature enabling users to install an alternative operating system, such as GNU/Linux. Sony later removed this feature via a forced update. Users who then attempted to re-implement the ability to install free software on the Playstation 3 were met with lawsuits and criminal sanction leading to global protests and boycotts of Sony since 2011. Users should be allowed to modify the free software that comes on their machines as well as free to install software of their choice.

Further, newer Video Game Consoles are capable of recording audio and video of users in their own homes, which brings a risk of that data being improperly used or leaked. Users must be able to remove such functionality if they wish.