

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 5: Audiovisual Works—Derivative Uses—Multimedia E-Books.

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.

Creators of Multimedia E-books have fair use rights in copyright audiovisual works. The application of the right to fair use, however, is impeded by access control restrictions which prevent the creators of Multimedia E-Books from taking clips and still images from other audiovisual works. The exception should extend to all Multimedia E-Books, not merely ones made for film criticism. While the purpose of a particular use is a factor in determining whether it is fair use, it is not the only factor. The exemption should not be so narrow as to be a backdoor attack on well established fair use rights.