

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

Item 1. Commenter Information

Donald Robertson, III
Free Software Foundation, Inc.
51 Franklin Street, Fifth Floor
Boston, MA 02110-1335
licensing@fsf.org

This comment is filed by the Free Software Foundation, a charitable corporation founded in 1985. The Foundation is the largest single copyright holder of 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 4: Audiovisual Works—HDCP/HDMI

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. This approach to software sharing and collaborative improvement has resulted in an incredibly powerful operating system, used everywhere from the International Space Station, to the US Department of Defense, to laptops used by millions. There is no longer any doubt that digital restrictions are totally unnecessary to achieve the socially beneficial purposes envisioned by copyright law. In fact, the continued existence of digital restrictions only hampers software development and cultural production, and amounts to a government subsidy for companies following outmoded and unethical practices.

Those who promote free software believe that controlling one's own computing should be a universal right. Digital restrictions interfere with the ability to enjoy this right. Circumventing such restrictions for any 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 control 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.

With regard to this particular exemption, all users have a legitimate right to circumvent controls on audiovisual works, regardless of the medium or the particular use involved. Limiting exemptions to particular users or to narrowly defined uses harms everyone, even those who may fall under existing exemptions. When the exemptions are too complicated for most users to understand, they have a chilling effect on anyone who would wish to circumvent controls for the purpose of capturing audiovisual works over HDCP/HDMI. The exemption should extend to all audiovisual works and all users, as well as to the sharing of tools needed to make circumvention possible.

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