



September 13, 2017

Sarang V. Damle
General Counsel and Associate Register of Copyrights
United States Copyright Office
101 Independence Ave., S.E.
Washington, D.C. 20559

Re: **Exemptions to Permit Circumvention of Access Controls on Copyrighted Works
[Docket No. 2017-10]**

Commenter Information:

This Comment is submitted on behalf of BSA | The Software Alliance (“BSA”), the leading advocate for the global software industry before governments and in the international marketplace. Its members are among the world’s most innovative companies, creating software solutions that spark the economy and improve modern life. With headquarters in Washington, DC, and operations in more than 60 countries around the world, advocates for public policies that foster innovation and drive growth in the digital economy.

Proposed Class Addressed:

(i) Computer programs, where the circumvention is undertaken on a lawfully acquired device or machine on which the computer program operates solely for the purpose of good-faith security research and does not violate any applicable law, including without limitation the Computer Fraud and Abuse Act of 1986, as amended and codified in title 18, United States Code; and provided, however, that, except as to voting machines, such circumvention is initiated no earlier than 12 months after the effective date of this regulation, and the device or machine is one of the following:

- (A) A device or machine primarily designed for use by individual consumers (including voting machines);*
- (B) A motorized land vehicle; or*
- (C) A medical device designed for whole or partial implantation in patients or a corresponding personal monitoring system, that is not and will not be used by patients or for patient care.*

(ii) For purposes of this exemption, “good-faith security research” means accessing a computer program solely for purposes of good-faith testing, investigation and/or correction of a security flaw or vulnerability, where such activity is carried out in a controlled environment designed to avoid any harm to individuals or the public, and where the information derived from the activity is used primarily to promote the security or safety of the class of devices or machines on which the computer program operates, or those who use such devices or machines, and is not used or maintained in a manner that facilitates copyright infringement.

Basis of Support:

BSA supports renewal of this exemption.

As businesses that rely on consumer trust, BSA members understand the importance of ensuring the security of their products and services. At every stage of the software development life cycle, from design to deployment, BSA members invest substantial resources into securing their products. In addition to maintaining their own security teams, BSA members also actively collaborate with the independent security research community to identify potential vulnerabilities and prevent their exploitation.

BSA therefore supports renewal of the security research exemption granted during the 2015 DMCA rulemaking cycle. The exemption provides important clarity to good-faith security researchers while maintaining important safeguards that protect the safety, privacy and property interests of rights holders and the public. The 2015 exemption is, for instance, limited to acts of circumvention “carried out in a controlled environment” and “where the information derived from the activity is used primarily to promote the security or safety of the class of devices or machines on which the computer program operates, or those who use such devices or machines.” As noted in the Recommendation of the Register of Copyrights, such safeguards leave room for “other legal regimes, regulatory authority and industry norms” to shape the contours of what constitutes “good-faith security research,” while ensuring that any “irresponsible disclosure” of security vulnerabilities, would “cause the research to fall outside of the exemption.”¹

¹ Register of Copyrights, Section 1201 Rulemaking: Sixth Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention, Recommendation of the Register of Copyrights at 319 (2015).