



# Petition to Renew a Current Exemption Under 17 U.S.C. § 1201

Please submit a separate petition for each current exemption for which renewal is sought.

**NOTE:** Use this form if you want to renew a current exemption without modification. If you are seeking to engage in activities not currently permitted by an existing exemption, including those that would require the expansion of a current exemption, you must submit a petition for a new exemption using the form available at <https://www.copyright.gov/1201/2018/new-petition.pdf>.

If you are seeking to expand a current exemption, we recommend that you submit both a petition to renew the current exemption without modification using this form, and, separately, a petition for a new exemption 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 seeking renewal.

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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. IDENTIFY WHICH CURRENT EXEMPTION PETITIONERS SEEK TO RENEW

Check the appropriate box below that corresponds with the current temporary exemption (see 37 C.F.R. § 201.40) the petitioners seek to renew. Please check only one box. If renewal of more than one exemption is sought, a separate petition must be submitted for each one.

### Literary Works:

- Literary works distributed electronically (*i.e.*, e-books), for use with assistive technologies for persons who are blind, visually impaired, or have print disabilities
- Literary works consisting of compilations of data generated by implanted medical devices and corresponding personal monitoring systems, to access personal data

### Computer Programs and Video Games:

- Computer programs that operate cellphones, tablets, mobile hotspots, or wearable devices (*e.g.*, smartwatches), to allow connection of a used device to an alternative wireless network (“unlocking”)
- Computer programs that operate smartphones, smart TVs, tablets, or other all-purpose mobile computing devices, to allow the device to interoperate with or to remove software applications (“jailbreaking”)
- Computer programs that control motorized land vehicles, including farm equipment, for purposes of diagnosis, repair, and modification of the vehicle
- Computer programs that operate devices and machines primarily designed for use by individual consumers (including voting machines), motorized land vehicles, or medical devices designed for implantation in patients and corresponding personal monitoring systems, for purposes of good-faith security research
- Computer programs that operate 3D printers, to allow use of alternative feedstock
- Video games for which outside server support has been discontinued, to allow individual play by gamers and preservation of games by libraries, archives, and museums (as well as necessary jailbreaking of console computer code for preservation uses only)

### Motion Pictures (*including television programs and videos*):

- For educational uses by college and university instructors and students
- For educational uses by K-12 instructors and students
- For educational uses in massive open online courses (“MOOCs”)
- For educational uses in digital and literacy programs offered by libraries, museums, and other nonprofits
- For multimedia e-books offering film analysis
- For uses in documentary films
- For uses in noncommercial videos

## ITEM C. EXPLANATION OF NEED FOR RENEWAL

Provide a brief explanation summarizing the continuing need and justification for renewing the exemption. The Office anticipates that petitioners may provide a paragraph or two detailing this information, but there is no page limit. While it is permissible to attach supporting documentary evidence as exhibits to this petition, it is not necessary. Below is a hypothetical example of the kind of explanation that the Office would regard as sufficient to support renewal of the unlocking exemption. The Office notes, however, that explanations can take many forms and may differ significantly based on the individual making the declaration and the exemption as issue.

I am a senior staff attorney at the Electronic Frontier Foundation, a nonprofit organization that defends civil liberties in the digital world. Founded in 1990, EFF champions user privacy, free expression, and innovation. EFF has taken an active role in policy debates and litigation concerning Section 1201 of the DMCA since the law's passage, and has participated in six of the seven triennial exemption rulemaking cycles. One of EFF's primary missions is supporting the work of software developers, security researchers, electronics repair specialists, and technologists by identifying and challenging legal impediments to their work. The following statement is based upon my personal knowledge and experience as a software engineer, attorney, and participant in four prior Section 1201 rulemakings, and upon my research into current mobile computing device markets and technologies.

Mobile computing devices are now ubiquitous. Over 2 billion smartphones are in use worldwide, along with hundreds of millions of tablets, smartwatches, personal fitness trackers, and other subcategories. The overwhelming majority of these devices run the iOS or Android operating systems. Those systems contain access controls that constrain their functionality and prevent certain modifications.

Every version of iOS up to the present day permits installation of new applications (apps) onto a device only through Apple's App Store, which means that Apple retains the ability to determine what software can and cannot run on iOS devices. Apple sometimes exercises this power in ways that can harm the interests of device users and software developers. For example, Apple recently removed many Virtual Private Network applications from its Chinese app store at the demand of the Chinese government. See <https://www.nytimes.com/2017/07/29/technology/china-apple-censorship.html>. As these apps protect communications from interception, their loss is harmful. Apple is also developing technology that can remotely disable the camera and audio recording features of its devices against the device user's wishes, which could be used to suppress information about current events (such as recordings of protests and police activity). See <http://www.sfgate.com/technology/article/New-patent-Apple-disable-iPhone-concert-movies-8330940.php>.

"Jailbreaking" an iOS device by modifying its firmware remains the only way to install non-approved apps.

While Android devices do not limit the loading of apps to the same degree, current Android-based firmware continues to limit the ways in which device users can modify their devices. Notably, many versions of the firmware prevent the user from deleting unwanted apps installed by the manufacturer. Jailbreaking or "rooting" an Android-based device is still necessary to remove those apps and to customize the functioning of a device in other important ways. Tens of millions of Android device users run alternative firmware such as CyanogenMod and LineageOS, which allow for fine-grained control and customization of mobile devices. Installing these requires jailbreaking or rooting.

Jailbreaking and rooting have been part of the mobile computing world since its inception, and remain so. Since 2010, these activities have been protected against legal uncertainty by exemptions to Section 1201(a)(1). The renewal of this exemption in 2012, and again in 2015 with an expansion to cover non-phone devices raised no meaningful opposition. Notably, no mobile device manufacturer, mobile operating system vendor, or mobile app developer has opposed a jailbreaking exemption since 2009.

Features and technologies developed for jailbroken/rooted devices continue to be adopted into official mobile operating systems and devices. Thus, the legal certainty created by the exemptions in force for the past seven years has contributed to innovation and value for mobile device users everywhere.

The Register's 2010 legal analysis, which was re-adopted in 2012 and 2015 without significant change, remains sound. Indeed, the Supreme Court in *Lexmark v. Impression Products* reaffirmed the importance of individuals' ability to use the products they buy without continued interference from a seller who sought to impose, in that case, patent license restrictions.

The exemption for jailbreaking mobile computing devices should be renewed.

## ITEM D. DECLARATION AND SIGNATURE

The declaration is a sworn statement made under penalty of perjury, and must be signed by one of the petitioners named above.

I declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. Based on my own personal knowledge and experience, I have a good faith belief that but for the above-selected exemption's continuation during the next triennial period (October 2018 – October 2021), technological measures controlling access to relevant copyrighted works are likely to diminish the ability of relevant users to make noninfringing uses of these works, and such users are likely to rely upon the above-selected exemption during the next triennial period.
2. To the best of my knowledge, there has not been any material change in the facts, law, or other circumstances set forth in the prior rulemaking record (available at <https://www.copyright.gov/1201/2015>) that originally demonstrated the need for the above-selected exemption, such that renewal of the exemption would not be justified.
3. To the best of my knowledge, the explanation provided in Item C above is true and correct, and supports the above statements.

### Name/Organization:

*If the petitioner is an entity, this declaration must be signed by an individual at the organization having appropriate personal knowledge.*

Electronic Frontier Foundation

### Signature:

*This declaration may be signed electronically (e.g., "/s/ John Smith").*

/s/ Mitchell L. Stoltz

### Date:

July 31, 2017