



# 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.

Auto Care Association  
 7101 Wisconsin Ave., Suite 1300, Bethesda, MD 20814  
 Contact: Aaron Lowe, Senior Vice President, Regulatory and Government Affairs  
 301-654-6664, ext. 1021 Aaron.Lowe@autocare.org www.autocare.org  
 Counsel: Seth D. Greenstein Constantine Cannon LLP  
 1001 Pennsylvania Av., N.W. 1300N, Washington, D.C. 20004  
 202 204-3514 sgreenstein@constantinecannon.com

Consumer Technology Association  
 1919 S. Eads Street, Arlington, VA 22202  
 Contact: Michael Petricone, Senior Vice President, Government Affairs  
 703-907-7544 mpetricone@cta.tech  
 Counsel: Robert S. Schwartz Constantine Cannon LLP  
 1001 Pennsylvania Avenue, N.W. 1300N  
 Washington, D.C. 20004  
 202 204-3508 rschwartz@constantinecannon.com

iFixit  
 1330 Monterey St., San Luis Obispo, CA 93401  
 Contact: Kyle Wiens, CEO and Co-founder  
 805-215-8789 kyle@ifixit.com

The Owners’ Rights Initiative  
 21 Dupont Circle NW, Suite 800 Washington, DC 20036  
 Contact: Jonathan Band, Counsel  
 202-296-5675 jband@policybandwidth.com

**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.

Auto Care Association (“Auto Care”) is a national trade organization of 3,000 members representing more than 150,000 independent businesses that manufacture, distribute, and sell motor vehicle parts, accessories, tools, equipment, materials, and supplies, and perform vehicle service and repair. Whereas in the past a repair shop or car owner could fix or improve vehicle performance solely by mechanical adjustments, many of those functions in modern automobiles are controlled by software embedded in electronic modules throughout the car. It is not uncommon that a single car will have as many as 50 or 70 such software-controlled modules.

A repair shop must access vehicle software in order to restore and adjust vehicle functionality and to offer upgrades and aftermarket products, in lawful competition with the manufacturer that originally sold the vehicle. Many of these software modules are protected using technological measures that prevent access to the software, and thereby prevent our members from diagnosing, maintaining, and repairing that vehicle part and the overall operation of the vehicle.

Unless this exemption is renewed, the software measures manufacturers deploy for the purpose of controlling access to vehicle software will prevent Auto Care members from lawfully assisting consumers in the maintenance, repair, and upgrade of their vehicles. In Auto Care’s view, such measures generally are not deployed to prevent copyrighted content from copying. Rather, motor vehicle manufacturers adopted these technological protection measures intending to hinder access by independent repair shops to the software that is necessary to car repair. Moreover:

- This software prevents innovative competitors from adding new software functionality that interoperates with the existing software.
- This software walls off access to non-copyrightable parameters and functions that must be altered for a car owner to perform the work necessary to improve or optimize vehicle performance.
- This software prevents companies that produce diagnostic tools for the independent auto care industry from copying vehicle software for the purpose of reverse engineering the vehicle systems to ensure interoperability with their own tools.

Renewal of this exemption is also necessary to afford consumers the benefits of marketplace competition, which they expect in every other sector. Following expiration of a new vehicle warranty, more than 70 percent of car owners who patronize repair shops rely on independent repair shops over dealerships. In the absence of competition from independent repair and car optimization/customization businesses, auto manufacturers and dealers would be able to charge monopoly prices for providing products and services after warranties have expired.

Auto Care is a signatory to the January 15, 2014 “Memorandum of Understanding” (“MOU”) with automotive manufacturers, which facilitates access by car owners and independent repair facilities to the same diagnostic and repair information that a manufacturer makes available to a dealer. However, the cost of acquiring hardware and software tools pursuant to the MOU may be prohibitively expensive for many smaller shops; and the delay in availability of these tools may deprive independent repair businesses of the opportunity to timely serve customer needs.

The exemption also is needed for consumers who wish to repair their own cars. Approximately 20 percent of American consumers buy automotive parts and products to maintain and repair their own vehicles. The exemption provides the only cost-effective way for these consumers to perform their own maintenance and repairs where circumvention of a technological protection measure is needed to access vehicle software controls.

Given the continuing trend toward the use of software to perform and control motor vehicle functions, and the implementation of technological measures to prevent independent repair shops and consumers from accessing that software, Auto Care submits that the exemption remains necessary for the next triennial period.

**ITEM C. EXPLANATION OF NEED FOR RENEWAL** (CONT'D)

Consumer Technology AssociationTM (“CTA”) is the trade association representing the \$292 billion U.S. consumer technology industry, which supports more than 15 million U.S. jobs. CTA’s more than 2,200 member companies lead the technology industry in the development, manufacturing, distribution, installation, and repair of audio, video, automotive aftermarket technologies, communications, information technology, multimedia, and accessory products, as well as related services, that are sold through consumer channels.

CTA’s concern over the right to innovate has ranged from its support for Sony Corporation’s right to market the first consumer VCR to current issues pertaining to online expression and commerce. In particular, CTA members invested in the aftermarket for vehicular technology development, repair, replacement, and safety technology products and services have a vital concern in those markets being free of artificial constraints on entry and competition. With more than 250,000,000 registered vehicles on the road today in the United States, it is essential that CTA member companies have access to vehicle software in order to develop and make available innovative solutions that support safe driving. Indeed, technology innovations developed in the aftermarket have in many cases resulted in significantly reducing driver fatalities.

iFixit is an international, open-source, online repair manual for everything. iFixit represents a global community of makers, fixers, refurbishers, tinkerers, and repair professionals. In 2016, iFixit helped over 90 million people repair everything from mobile phones to cars.

Renewal of this exemption is necessary to preserving consumer choice and ownership rights. Modern cars aren’t merely mechanical anymore; there is more to them than engines and gearboxes. They are computers on wheels. A single car contains dozens of different ECUs. Just as they always have with hardware, consumers should be able to modify the software in their own vehicles—especially for the purpose of repair. Troubleshooting, diagnosis, and repair of modern cars requires access to specialized software tools and systems. Increasingly, car manufacturers are taking steps, through the means of software locks, to prevent owners from accessing software systems in their own cars. Such tactics stymie innovation and make it more difficult for owners to repair their cars, either in their driveway or in a repair shop of their choice.

The Owners’ Rights Initiative (“ORI”) is an organization of over 20 companies and associations that have joined together to protect ownership rights in the United States. We believe in the fundamental premise that if you bought it, you own it. We are dedicated to making sure that intellectual property rights do not inappropriately interfere with the personal property rights of consumers, businesses, and non-profit institutions that own products incorporating intellectual property. We support renewal of this exemption so that owners of motorized land vehicles can continue to engage in the diagnosis, repair, and modification of their vehicles. Absent this exemption, section 1201 would interfere with this noninfringing activity.

## 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.*

Auto Care Association, Consumer Technology Association, iFixit, Owners' Rights Initiative

### Signature:

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

/s/ Aaron Lowe Auto Care /s/ Michael E. Petricone CTA /s/ Kyle Wiens iFixit /s/ Jonathan Band for ORI

### Date:

July 31, 2017