



# 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 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.

In the 2015 Rulemaking, EFF petitioned successfully for an exemption covering circumvention of access controls in motorized land vehicles for purposes of diagnosis, repair, and lawful modification. I have personal knowledge that this exemption has helped remove legal uncertainty from a range of projects involving various motorized land vehicles. In addition to cars, trucks, and agricultural vehicles, the exemption has assisted and likely will continue to assist those repairing, diagnosing, and modifying personal vehicles such as motorized wheelchairs, segways, motorcycles, and other vehicles designed for individual use.

For instance, the undersigned spoke with an individual who is part of a group that modifies their own motorized wheelchairs and mobility scooters to ensure each device meets the individual needs of the person who relies upon them. Technological protection measures stood between the device owners and their desired repairs and modifications, and they needed to circumvent.

Individuals are also continuing to experiment with circumvention in order to analyze and modify devices that range from Segway personal transport vehicles and so-called "hoverboard" vehicles to big rig trucks and buses. Owners of single-person vehicles, as well as larger vehicles, continue to tune their devices for performance or fuel economy, and repair and diagnose their devices, and frequently need to circumvent in order to do so.

Likewise, the law continues to support the non-infringing activities falling within the exemption. 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. For all the reasons that supported the exemption in the 2015 Rulemaking, renewal is justified here.

EFF respectfully requests the renewal of the exemption for repair, diagnosis, and modification of software in motorized land vehicles.

## 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/ Kit Walsh

**Date:**

July 31, 2017