



## 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.

The petitioner is the Center for Democracy and Technology, a non profit advocacy organization working to advance democratic values in the digital age. The organization is located at 1401 K St NW, Suite 200, Washington, DC 20005. The contact for the organization is Ferras Vinh, who can be reached via email at [fvinh@cdt.org](mailto:fvinh@cdt.org) or by phone at (202) 407-8827.

**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.

The Center for Democracy & Technology (CDT) is a non profit advocacy organization working to advance democratic values in the digital age. CDT participated in the sixth triennial rulemaking, advocating for an exemption for good faith security research on computer programs and devices with embedded software. As a result of this process, the Library adopted an exemption along these lines, allowing security research on consumer devices (including voting machines), motorized land vehicles, and medical devices.

Since the last proceeding, CDT has continued efforts to enable security researchers to discover and repair flawed software. These efforts include extensive research on the issue, including interviews with researchers to determine the kinds of challenges they face in their work. The interviews reveal that Section 1201's prohibition on the circumvention of technological protection measures (TPMs) is often a legal impediment or source of uncertainty and risk to computer scientists wishing to test TPM protected software for vulnerabilities. Moreover, because of the conditional clause contained in Section 1201's statutory exemption for security testing, researchers face not only the chilling effect of the prohibition on circumvention, but also the possibility of liability under the Computer Fraud and Abuse Act (CFAA).

Since the last triennial proceeding, nothing has changed to diminish or eliminate the value of security research nor the exemption upon which it relies. Under the protective legal umbrella of the exemption, researchers can help ensure the safety of devices and machines that are used on an everyday basis by pinpointing flaws in programming that may compromise the privacy or endanger the wellbeing of American consumers. It also provides researchers with an explicit avenue to investigate vulnerabilities in the software featured in cars that may allow bad actors to remotely commandeer the acceleration and braking functions. [1]

Despite the relatively short time span of the exemption, security researchers have been able to rely upon it to help improve the safety and security of devices. For example, security researchers at WhiteScope were able to investigate and uncover more than 8,000 known vulnerabilities in pacemaker software, flagging issues that require immediate attention from manufacturers and potentially creating a safer product for consumers [2] And more recently, local election officials have cited the importance of security research into voting machines in identifying potential threats and preserving the integrity of our democracy. [3]

The need for such independent security research was recognized by Congress when Section 1201 was enacted into law, but uncertainties surrounding the application of and eligibility for the existing statutory exemption discourage computer scientists who might otherwise rely on it. [4] The importance of security testing continues to grow as more elements of our lives depend on reliable software. Subsequently, the potential dangers posed by flaws and vulnerabilities in software and devices will likely grow in both the degree and the scope of harm. The added certainty provided by the triennial exemption will improve the legal landscape for security researchers and enable them to more comprehensively research and address vulnerabilities. Therefore, the current exemption should be renewed.

Note: CDT will also file a separate petition to expand the current exemption to ensure the integrity and security of these devices.

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

- [1] See Andy Greenberg, The Jeep Hackers Are Back to Prove Car Hacking Can Get Much Worse, *Wired*, Aug. 1, 2016, <https://www.wired.com/2016/08/jeep-hackers-return-high-speed-steering-acceleration-hacks/>.
- [2] Billy Rios, Understanding Pacemaker Systems Cybersecurity, *WhiteScope IO* (May 23, 2017, 9:44 AM), <http://blog.whitescope.io/2017/05/understanding-pacemaker-systems.html>.
- [3] Jill Leovy, Worried about election hacking, L.A. County officials are turning to hackers for help, *L.A. Times*, July 26, 2017, <http://www.latimes.com/business/technology/la-fi-defcon-voting-20170724-story.html>. See also Kate Conger, Every Voting Machine at This Hacking Conference Got Totally Pwned, *Gizmodo*, (July 31, 2017, 12:25 PM), <http://gizmodo.com/every-voting-machine-at-this-hacking-conference-got-tot-1797368945>.
- [4] Edward Felten, The Chilling Effects of the DMCA, *Slate*, March 29, 2013, [http://www.slate.com/articles/technology/future\\_tense/2013/03/dmca\\_chilling\\_effects\\_how\\_copyright\\_law\\_hurts\\_security\\_research.html](http://www.slate.com/articles/technology/future_tense/2013/03/dmca_chilling_effects_how_copyright_law_hurts_security_research.html).

## **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.*  
Center for Democracy & Technology (represented by Stan Adams and Ferras Vinh)

**Signature:**

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

**Date:**  
7/31/17