



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

## 9th Triennial Rulemaking

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 [copyright.gov/1201/2024/new-petition.pdf](https://copyright.gov/1201/2024/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.

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

- Excerpts for use in documentary filmmaking or other films where use is in parody or for a biographical or historically significant nature
- Excerpts for use in noncommercial videos
- Excerpts for use in nonfiction multimedia e-books
- Excerpts for educational purposes by college and university faculty, students, or employees acting at the direction of faculty, or K–12 educators and students
- Excerpts for educational purposes by faculty and employees acting at the direction of faculty in massive open online courses (“MOOCs”)
- Excerpts for educational purposes in digital and literacy programs offered by libraries, museums, and other nonprofits
- For the provision of captioning and/or audio description by disability services offices or similar units at educational institutions for students, faculty, or staff with disabilities
- For the preservation or the creation of a replacement copy of the motion picture by libraries, archives, or museums
- For text and data mining by a researcher affiliated with a nonprofit institution of higher education, or by student or staff at the direction of such researcher, for the purpose of scholarly research and teaching

### **Literary Works:**

- Literary works distributed electronically for text and data mining by a researcher affiliated with a nonprofit institution of higher education, or by student or staff at the direction of such researcher, for the purpose of scholarly research and teaching
- Literary works or previously published musical works that have been fixed in the form of text or notation whose technological protection measures interfere with assistive technologies
- Literary works consisting of compilations of data generated by medical devices or their personal corresponding monitoring systems, to access personal data

### **Computer Programs and Video Games:**

- Computer programs that operate wireless devices, to allow connection to an alternative wireless network (“unlocking”)
- Computer programs that operate smartphones and portable all-purpose mobile computing devices to allow the device to interoperate with or to remove software applications (“jailbreaking”)
- Computer programs that operate smart televisions to allow the device to interoperate with software applications on the television for purposes other than gaining unauthorized access to copyrighted works (“jailbreaking”)
- Computer programs that operate voice assistant devices to allow the device to interoperate with or to remove software applications for purposes other than gaining unauthorized access to copyrighted works (“jailbreaking”)
- Computer programs that operate routers and dedicated network devices to allow the device to interoperate with software applications on the device for purposes other than gaining unauthorized access to copyrighted works (“jailbreaking”)
- Computer programs that control motorized land vehicles, marine vessels, or mechanized agricultural vehicles or vessels for purposes of diagnosis, repair, or modification of the vehicle, including to access diagnostic data
- Computer programs that control devices designed primarily for use by consumers for diagnosis, maintenance, or repair of the device or system
- Computer programs that control medical devices or systems, and related data files, for diagnosis, maintenance, or repair of the device or system
- Computer programs for purposes of good-faith security research
- 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), and discontinued video games that never required server support, for preservation by libraries, archives, and museums
- Computer programs other than video games, for the preservation of computer programs and computer program-dependent materials by libraries, archives, and museums
- Computer programs that operate 3D printers, to allow use of alternative material
- Computer programs for purpose of investigating potential infringement of free and open source computer programs
- Video games in the form of computer programs for purpose of allowing an individual with a physical disability to use alternative software or hardware input methods

### 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 will 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 at issue.

Petitioners are computer scientists whose research focuses on computer security and privacy, with an emphasis on problems that broadly impact society and public policy, including software security, network security, data privacy, anonymity, electronic voting, censorship resistance, computer forensics, ethics, and cybercrime. They regularly conduct good faith security research on a variety of computer programs on devices and machines. These devices include voting machines, encryption devices underpinning the financial industry, smartphones, and home routers, printers, and other “Internet of things” devices. They are especially well-positioned to speak to the ongoing necessity of renewing the current exemption for good faith security research on such devices because of their first-hand knowledge of the security research industry and their experience as active participants in past triennial reviews for exemptions intended to mitigate the potential adverse effects resulting from legitimate security research. More specifically, one or both of petitioners participated in past rulemakings as follows:

- In 2008, seeking and receiving an exemption in connection with his non-infringing research into security flaws in digital rights management technologies included with sound recordings on compact discs.
- In 2010, seeking and receiving an exemption in connection with non-infringing research into security flaws in digital rights management technologies included with video games.
- In 2015, seeking and partially receiving an exemption for security research.
- In 2018, advocating for the careful refinement and expansion of the existing exemption for security research to ensure that legitimate security research was encouraged and supported while continuing to mitigate the potential adverse effects of this research.
- In 2021, along with a number of organizations and computer security researchers, proposing the elimination of several limitations that chilled security research, some of which were adopted.

In the judgment of the petitioners based on their expertise and personal knowledge, the concerns underlying the Office’s decision to recommend the exemption remain and have been exacerbated since the previous rulemaking. Cybersecurity remains a national priority, with an increased emphasis on securing private infrastructure. See, e.g., Executive Order on Improving the Nation’s Cybersecurity, Exec. Order No. 14, 028, 86 Fed. Reg. 26633 (May 17, 2021). Security researchers play a vital role in this work, as vulnerability disclosure and remediation are key to securing existing infrastructure.

Bad actors continue to use the threat of litigation to silence good faith security researchers. For example, Fizz, a start-up social network, threatened three undergraduate Stanford students who notified the company of significant vulnerabilities with civil and criminal liability under 17 U.S.C. § 1201. See Joyce Chen, Opinion I Fizz previously compromised its users’ privacy. It may do so again, *The Stanford Daily* (Nov. 1, 2022), available at <https://stanforddaily.com/2022/11/01/opinion-fizz-previously-compromised-its-users-privacy-it-may-do-so-again/>. Such threats would be more common and more chilling absent the existing exemption for security research.

Moreover, no circumstances have arisen to change the reality that security research is a fundamentally non-infringing activity with significant social value attenuated from legitimate copyright concerns. In fact, the Eleventh Circuit’s decision in *Apple v. Corellium*, 21-12835, 2023 WL 3295671 (11th Cir. May 8, 2023), bolsters petitioners’ fair use argument. If the exemption is not renewed, the potential for § 1201 to continue to adversely affect security researchers from engaging in these activities—in service of a significant national priority—is unquestionable. Accordingly, the Librarian and the Office should renew the exemption.

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

[Empty rectangular box for explanation of need for renewal]

## 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 2024–October 2027), 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 [copyright.gov/1201/2021](https://copyright.gov/1201/2021)) 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.*

Kendra Albert, on behalf of Prof. Matthew Green and Prof. J. Alex Halderman

### Signature:

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

/s/ Kendra Albert

### Date:

7/7/23