



# 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.

Petitioner:

Institute of Scrap Recycling Industries, Inc.  
<http://www.isri.org/>

Counsel for Petitioner:

Phil Malone  
Juelsgaard IP and Innovation Clinic  
Mills Legal Clinic at Stanford Law School  
559 Nathan Abbott Way  
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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.

Introduction - ISRI is pleased to submit comments regarding the DCMA Section 1201 triennial proceedings on behalf of our members who recycle, refurbish and repair used electronics devices including smartphones, tablets, notebooks, desktops computers, servers, and a myriad of other electronic products.

The Institute of Scrap Recycling Industries, Inc. (ISRI) is the "Voice of the Recycling Industry." ISRI represents nearly 1,600 companies operating in nearly 5,000 locations in the U.S. and 41 countries worldwide that process, broker, and consume scrap commodities, including metals, paper, plastics, glass, rubber, electronics, and textiles. With headquarters in Washington, DC, ISRI provides education, advocacy, safety and compliance training, and promotes public awareness of the vital role recycling plays in the U.S. economy, global trade, the environment and sustainable development. Generating \$117 billion annually in U.S. economic activity, the scrap recycling industry provides more than half a million Americans with good jobs. For more information about ISRI, please visit ISRI.org.

Background - ISRI has been involved in the §1201 triennial proceedings for several cycles now. In the last round, ISRI filed an initial petition for a new exemption, along with comments and reply comments, to allow unlocking of all wireless devices to be used on different wireless carriers. The 2021 Final Rule granted an exemption for "[c]omputer programs that enable wireless devices to connect to a wireless telecommunications network, when circumvention is undertaken solely in order to connect to a wireless telecommunications network and such connection is authorized by the operator of such network." ISRI is aware of the issues involved with this exemption and the historical need for it. Through my work, I have personal knowledge that this need continues to exist and will do so during the next triennial period.

Expanding Number of 5G Devices - The Register's 2021 Recommendation to approve the current exemption recognized that an increasing number and range of devices included the ability to connect to a wireless communications network, and that many 5G-enabled devices generally used one of a limited number of modems, meaning that the firmware subject to the fair use analysis and the TPM and firmware being circumvented are often the same across device categories that share a particular modem. While the number of discrete 5G modems that device manufacturers can buy to integrate into their devices has increased somewhat during the last three years, my understanding is that most 5G chipsets in the United States continue to be developed by Qualcomm, so unlocking all wireless devices continues to implicate a limited number of modem models from a single chipset vendor. Moreover, as ISRI's comments predicted in 2021, the number of devices of all sorts that include 5G connectivity has increased dramatically over the last three years, to a June 2023 total of roughly 1,579 commercially available devices, an increase of 48.75 percent since the end of May 2022, representing at least 26 announced form factors. See Global Mobile Suppliers Association, 5G Device Ecosystem Member Report Summary (June 2023), <https://gsacom.com/paper/5g-ecosystem-june-2023-member-report/>.

Bulk Unlocking Continues to be Necessary - ISRI previously detailed, and the Register's Recommendation and the Final Rule recognized, the adverse effects caused by the threat of §1201 enforcement and experienced by wireless device owners, including individual consumers, resellers, and recyclers. Three years later, ISRI members continue to purchase or acquire donated cell phones, tablets, laptops, and a variety of other wireless devices no longer needed by their original owners and try to make the best possible use of them through resale or recycling. Wireless carriers still lock devices to prevent them from being used on other carriers, and ISRI members continue to receive devices from their prior owners in a locked state. While there are variations in which devices are locked and when or if carriers are willing to unlock them, the overall landscape has not changed in any way material to this exemption. Unlocking those devices does not implicate legitimate copyright interests any more now than three years ago. And the exemption continues to be necessary to allow device owners to connect their devices to a wireless telecommunications network.

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

Request - Given the steady increase in devices with a wide variety of form factors using 5G and other wireless connection, the continued sale of carrier-locked wireless devices, the continued desire of consumers and resellers to unlock the wireless devices they own, and the lack of material change in the copyright interests (or lack thereof) at issue, ISRI respectfully requests that the exemption allowing unlocking of all devices be renewed.

Additionally, ISRI requests that, should any party submit opposition comments purporting to introduce new, meaningful information and should the Register "decline[] to recommend for renewal under the streamlined process," proponents of the exemption continue to be able to rely on the prior record and only be required to address the new information rather than being forced to pursue the exemption from scratch.

## 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.*

William H. Johnson, Chief Lobbyist, Institute of Scrap Recycling Industries, Inc.

### Signature:

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

/s/ William H. Johnson

### Date:

July 7, 2023