

Docket (/docket/COLC-2020-0010) / Document (COLC-2020-0010-0075) (/document/COLC-2020-0010-0075)  
/ Comment

 PUBLIC SUBMISSION

## Class\_13\_Opp'n\_The Motor & Equipment Manufacturers Association

Posted by the **U.S. Copyright Office** on Feb 10, 2021

View More Comments 115 (/document/COLC-2020-0010-0075/comment)

Share ▾

Comment

Class 13 (Computer Programs – Security Research)

The Motor & Equipment Manufacturers Association (“MEMA”) opposes adoption of the proposed Class 13 exemption.

The current exemption for good-faith security research reflects a delicate balance—achieved during the 6th and 7th triennial rulemakings—between consumer safety, protection of intellectual property, and support for critical research and innovation.

This balance is maintained by important limitations on the exemption that help to reduce the risk associated with circumvention of technological protection measures (“TPMs”) in vehicle software and computer programs. First, the exemption only permits circumvention on a “lawfully acquired” device or machine. Second, the exemption permits circumvention “solely for the purpose of good faith security research” in “an environment designed to avoid any harm to individuals or the public.” And third, the exemption only permits circumvention when “the information derived from the activity is used primarily to promote the security or safety of the class of devices or machines on which the computer program operates.”

The proposed exemption would upend this delicate balance. One petitioner, for example, asks the Copyright Office to expand the current exemption to allow device owners “to remove software or disable functionality that may expose personal information” and to allow circumvention by “individual consumers and hobbyists who wish to prevent their private data from being disclosed by the devices they own.” SFC Class 13 Pet. at 2.

While MEMA understands the desire of consumers to have control over their personal information, the good-faith security research exemption is not the appropriate mechanism. When adopting this exemption during the 2015 rulemaking, the Copyright Office noted the “importance of good-faith security research to identify and address software flaws and malfunctions.” Register of Copyrights, 2015 Recommendation, at

316. In order to mitigate potential safety concerns, the Copyright Office restricted security research to controlled settings, while noting that research should not take place “in cars being driven on public roads.” *Id.* at 318. Petitioners, on the other hand, would turn this exemption into a means for consumers to opt-in or opt-out of certain functionality simply on the basis of personal preference (i.e., if a consumer “wishes” to prevent data from being disclosed). Unlike the current exemption, which permits circumvention only in controlled environments, the proposed exemption appears to suggest that consumers could opt-out for an indefinite period of time, not just during testing in a controlled environment.

Another petitioner requests to “remove the limitation that circumvention be undertaken on a ‘lawfully acquired device or machine on which the computer program operates.’” Halderman, CDT & ACM Class 13 Pet. at 3. A similar request was considered and rejected by the Copyright Office in 2018 and should be rejected again. When this exemption was first adopted in 2015, the decision was rooted in the determination that the proposed research would take place only on lawfully obtained copies of software because acquiring a device in violation of law would weigh heavily against a fair use finding. Register of Copyrights, 2018 Recommendation, at 298. Petitioners have not provided any evidence to warrant reversal of this finding.

As the Copyright Office has noted previously, any exemptions that will affect motor vehicles must take into account the significant safety and regulatory considerations at issue. For this reason, exemptions should be narrowly tailored to mitigate potential safety and regulatory concerns. *Id.* Over the previous two rulemakings, the Copyright Office has developed a thoughtful and narrowly tailored exemption that permits good-faith security research subject to reasonable limitations. The exemption should be retained as is.

Therefore, MEMA opposes both petitioners’ requests for revisions to the current exemption for Class 13 and urges the Copyright Office to not grant any expansion of the current exemption.

#### About MEMA

MEMA is the leading trade association representing U.S. motor vehicle parts suppliers. Our members manufacture and remanufacture components, technologies, and systems for use in passenger vehicles and heavy trucks, supplying both the original equipment and aftermarket segments. In total, vehicle parts manufacturers represent the largest sector of manufacturing jobs in the United States, directly employing over 900,000 Americans in all 50 states. MEMA represents its members through four divisions: Automotive Aftermarket Suppliers Association (“AASA”); Heavy Duty Manufacturers Association (“HDMA”); MERA, The Association for Sustainable Manufacturing; and Original Equipment Suppliers Association (“OESA”).

**Comment ID**

COLC-2020-0010-0149

**Tracking Number**

kku-4eh8-7zzl

**Comment Details****Submitter Info**

**Organization Name**

The Motor & Equipment Manufacturers Association (“MEMA”)

---



*Your Voice in Federal Decision Making*

About   Agencies   Learn  
(/about)   (/agencies)   (/learn)

Reports   FAQ  
(<https://resources.regulations.gov/public/component/main?main=Reports>)   (/faq)

Privacy & Security Notice (/privacy-notice) | User Notice (/user-notice) |  
Accessibility Statement (/accessibility) | Developers (<https://open.gsa.gov/api/regulationsgov/>)

Support (/support)   Provide Site Feedback