



Petition for New Exemption Under 17 U.S.C. § 1201

8th Triennial Rulemaking

Please submit a separate petition for each proposed exemption.

NOTE: Use this form if you are seeking to engage in activities not currently permitted by an existing exemption. If you are seeking to engage in activities that are permitted by a current exemption, instead of submitting this form, you may submit a petition to renew that exemption using the form available at <https://www.copyright.gov/1201/2021/renewal-petition.pdf>.

If you are seeking to expand a current exemption, we recommend that you submit both a petition to renew the current exemption, and, separately, a petition for a new exemption using this form 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 proposing the exemption.

iFixit is an international, open-source, online repair manual for everything. iFixit represents a global community of makers, fixers, refurbishers, tinkerers, and repair professionals. In 2019, iFixit helped over 120 million people repair everything from mobile phones to cars and tractors. Renewal and expansion of these exemptions is necessary to preserving ownership rights and maintaining a consumer’s right to repair.

Public Knowledge is a nonprofit organization that is dedicated to preserving the openness of the Internet and the public’s access to knowledge, promoting creativity through balanced intellectual property rights, and upholding and protecting the rights of consumers to use innovative technology lawfully. Public Knowledge advocates on behalf of the public interest for a balanced copyright system, particularly with respect to the public’s right to repair.

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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. DESCRIPTION OF PROPOSED NEW EXEMPTION

Provide a brief statement explaining the nature of the proposed new or expanded exemption. The information that would be most helpful to the Office includes the following, to the extent relevant: (1) the types of copyrighted works that need to be accessed; (2) the physical media or devices on which the works are stored or the services through which the works are accessed; (3) the purposes for which the works need to be accessed; (4) the types of users who want access; and (5) the barriers that currently exist or which are likely to exist in the near future preventing these users from obtaining access to the relevant copyrighted works.

Petitioners need not propose precise regulatory language or fully define the contours of an exemption class. Rather, a short, plain statement describing the nature of the activities the petitioners wish to engage in will be sufficient, as proponents will have the opportunity to further refine or expound upon their initial petitions during later phases of the rulemaking. The Office anticipates that in many cases petitioners will be able to adequately describe in plain terms the relevant information in a few sentences, or even a single sentence, as with the examples below.

iFixit and Public Knowledge propose a new exemption to allow for circumvention of TPMs to repair video game consoles and replace damaged hardware.

Background:

Video game consoles, like PCs, contain numerous discrete physical components. Failure of any one of these components can render the entire console inoperable. Manufacturers such as Sony, Nintendo, and Microsoft are increasingly using TPMs to pair console components to one another, thus preventing their repair or replacement by owners or third parties.

For example, a common point of failure in the current generation of consoles is the optical drive. Replacing an optical drive is, by itself, relatively straightforward. However, over the past decade, console manufacturers have increasingly used TPMs to “marry” motherboards to their original optical drives. Unlike replacing an optical drive, replacing an entire motherboard is expensive and complicated. Optical drives are commodity components that can be purchased from a variety of suppliers, while motherboards can only be produced by the console manufacturers. To replace the optical drive without also replacing the motherboard, a user must “divorce” the motherboard and optical drive by temporarily circumventing TPMs in both, then pair the motherboard to the replacement drive.

Repair, diagnosis, and maintenance are non-infringing activities. By pairing the optical drive to the motherboard and refusing to sell motherboards to consumers, manufacturers are forcing consumers to buy a replacement device rather than repair their console.

Five factors:

(1) the types of copyrighted works that need to be accessed;

Software code controlling the pairing of hardware devices to the console motherboard.

(2) the physical media or devices on which the works are stored or the services through which the works are accessed;

The relevant code is stored on both the motherboard and the damaged component.

(3) the purposes for which the works need to be accessed;

The work must be accessed in order to repair and replace physical components including (but not limited to) optical drives and card readers.

(4) the types of users who want access;

Users include owners, repair technicians, and third party agents such as parts retailers.

(5) the barriers that currently exist or which are likely to exist in the near future preventing these users from obtaining access to the relevant copyrighted works.

Currently, the code described in items (1) and (2) is protected by TPMs. The announcements of the next Xbox and PlayStation consoles indicate that manufacturers will continue to include these TPMs in future console versions.

ITEM B. DESCRIPTION OF PROPOSED NEW EXEMPTION (CONT'D)

[Empty box for description of proposed new exemption]