



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

## 8th 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 <https://www.copyright.gov/1201/2021/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.

Competitive Carriers Association (“CCA”) is the nation’s leading association for competitive wireless providers and stakeholders across the United States. Members range from small, rural carriers serving fewer than 5,000 customers to regional and nationwide providers serving millions of customers, as well as vendors and suppliers that provide products and services throughout the wireless communications ecosystem.

Commenter Representative: Alexi Maltas, Senior Vice President & General Counsel, Competitive Carriers Association; [amaltas@ccamobile.org](mailto:amaltas@ccamobile.org)

**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 educational purposes by college and university or K-12 faculty and students
- Excerpts for educational purposes by faculty in massive open online courses (“MOOCs”)
- Excerpts for educational purposes in digital and literacy programs offered by libraries, museums, and other nonprofits
- Excerpts for use in nonfiction multimedia e-books
- 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
- For the provision of captioning and/or audio description by disability services offices or similar units at educational institutions for students with disabilities

### **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 new or used device to an alternative wireless network (“unlocking”)
- Computer programs that operate smartphones, tablets and other all-purpose mobile computing devices, smart TVs, or voice assistant 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, or modification of the vehicle, including to access diagnostic data
- Computer programs that control smartphones, home appliances, or home systems, for diagnosis, maintenance, or repair of the device or system
- Computer programs for purposes of good-faith security research
- Computer programs other than video games, for the preservation of computer programs and computer program-dependent materials by libraries, archives, and museums
- 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 that operate 3D printers, to allow use of alternative feedstock

## 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 at issue.

CCA represents competitive wireless providers and stakeholders across the United States. Renewing the “unlocking” exemption without modification will ensure that consumers and competitors continue to benefit in an environment where dominant providers cannot facially restrict consumer device choice, and cannot monopolize particular wireless devices by limiting them to just one network. CCA has advocated in multiple section 1201 rulemaking proceedings for the wireless device unlocking exemption, and is intimately familiar with both the issues surrounding this exemption, and the need for a continued exemption. CCA has direct knowledge that its carrier members and their consumers continue to need the unlocking exemption for the foreseeable future. The unlocking capability of wireless devices empowers consumers to switch wireless providers when another provider may more effectively cater to their wireless demands. Without this unlocking capability, consumers may be forced to either remain with a service provider that may not provide satisfactory service, or buy an entirely new wireless device at a substantial cost. This cost may be further exacerbated by the loss of personal information, contacts, music, or apps stored on the device, and purchases of peripheral items exclusive to that wireless device or provider. Charities and recyclers also rely on unlocked wireless devices to be redistributed to the market, providing products to those in need of these wireless devices but may not be able to afford them. These organizations will suffer without the support of an exemption, resulting in fewer wireless devices to those in need, and disposal of otherwise usable products.

As the Register has previously stated, “potential available alternatives,” such as voluntary unlocking policies, “are insufficient to mitigate these adverse effects.” See 2015 Register Recommendation at 165. While some service providers have revised their handset unlocking policies, such policies are voluntary, do not apply to all wireless devices, and could be changed at a moment’s notice. The Senate has further recognized that there are “circumstances in which additional avenues for unlocking may be preferable over attempting to unlock through the carriers.” See Senate Report 113-212, Unlocking Consumer Choice and Wireless Competition Act, S. 517, 113th Congress (2013). For instance, carriers may be slow to respond to requests for unlocking wireless devices, may be located an inconvenient distance from the customer, may complicate the unlocking process, or may use an unlocking request as an opportunity to engage in unwanted “customer win-back” strategies. These reasons remain true today.

After the 2012 handset unlocking exemption was allowed to expire, Congress recognized these, and potentially other, adverse effects, and took action to immediately reinstate and expand the exemption in the “Unlocking Consumer Choice and Wireless Competition Act.” Congress was responding to the will of the people, from a White House petition with more than 114,000 signatures of concerned consumers opposing the lapse of the unlocking exemption, and thereby opposing losing their ability to retain their device while switching wireless carriers. Neglecting to renew the unlocking exemption for wireless devices would result in similar consumer harm today.

The unlocking exemption has a long precedent at the Copyright Office. The Register recommended, and the Librarian adopted, exemptions permitting the unlocking of wireless telephone handsets in 2006, 2010, 2012, 2015 and 2018 (with the exemption being expanded in 2015 to include additional wireless devices, and in 2018 to include new devices). Notably, the unlocking renewal exemption petitions garnered no opposition in 2018, with the Register noting that “the petitions demonstrate the continuing need and justification for the exemption.” See 2018 Register Recommendation at 23. Importantly, in the 2018 Registrar Recommendation, the Register found that the unlocking exemption was likely to facilitate non-infringing uses both under section 117 and as a matter of fair use. See 2018 Register Recommendation at 150-152.

As consumers increasingly rely on wireless devices in their daily activities, it becomes increasingly important for consumers to have the right to freely choose a service on which they can rely. Accordingly, CCA requests that the Copyright Office renew the current unlocking exemption.

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

## 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 2021 – October 2024), 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/1201/2018>) 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.*

Alexi Maltas/Competitive Carriers Association

### Signature:

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

/s/ Alexi Maltas

### Date:

July 22, 2020