



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

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/1201/2018/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.

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#### Petitioners:

Prof. Ed Felten and Prof. J. Alex Halderman

Prof. Felten is a computer scientist whose research interests include computer security and privacy, and public policy issues relating to information technology—specifically, software security, Internet security, electronic voting, cybersecurity policy, technology for government transparency, network neutrality, and Internet policy.

Prof. Halderman is a computer scientist 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.

#### Representative:

Samuelson-Glushko Technology Law & Policy Clinic, Colorado Law  
Blake E. Reid, Director  
Elizabeth Field and Justin Manusov, Student Attorneys  
Counsel to Prof. Felten and Prof. Halderman  
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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.

*Examples:*

*A proposed exemption for owners of 3D printers to circumvent technological protection measures on firmware or software in 3D printers to run the printers' operating systems to allow use of non-manufacturer-approved feedstock.*

*A proposed exemption for computer programs in tractors that use lockout codes to prevent farmers from repairing broken tractor parts.*

*A proposed expansion of the current exemption for motion pictures (including television programs and videos) for uses in documentary films. The expansion sought is to cover lawfully obtained copies of motion pictures contained on Blu-ray discs.*

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In addition to our July 31, 2017 petition to renew the temporary exemption for good-faith security research codified at 37 C.F.R. § 201.40(b)(7),<sup>1</sup> the above-referenced petitioners additionally petition the Office to modify and clarify that exemption by:

- (1) Removing the limitation that circumvention be undertaken on the specific categories of devices specified in 37 C.F.R. § 201.40(b)(7)(i)(A)-(C);
- (2) Removing the limitation that circumvention be undertaken on a “lawfully acquired device or machine on which the computer program operates” and “not violate any applicable law, including without limitation the Computer Fraud and Abuse Act of 1986, as amended and codified in title 18, United States Code” to avoid potentially exporting the significant civil and criminal liability in Sections 1203 and 1204 of the Digital Millennium Copyright Act (DMCA)<sup>2</sup> to other non-copyright legal regimes;
- (3) Removing the limitation that circumvention be “carried out in a controlled environment designed to avoid any harm to individuals or the public” to avoid uncertainty about the contours of those terms;
- (4) Removing both references to the term “solely” from the provisions of the exemption in 37 C.F.R. § 201.40(b)(7)(i) and (ii) to avoid unconstitutionally limiting post-circumvention First-Amendment-protected speech that includes information derived from good-faith security research;
- (5) Removing the limitation that “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, or those who use such devices or machines, and is not used or maintained in a manner that facilitates copyright infringement” to avoid unconstitutionally limiting post-circumvention

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<sup>1</sup> <https://www.regulations.gov/document?D=COLC-2017-0007-0023>.

<sup>2</sup> 17 U.S.C. §§ 1203, 1204.

First-Amendment-protected speech that includes information derived from good-faith security research and to avoid conditioning security researchers' ability to circumvent in service of that speech on post-circumvention behavior by third parties whose behavior researchers do not control.

- (6) Clarifying that the expanded exemption will go into effect immediately upon the issuance of the final rule by the Librarian of Congress as required by Section 1201(a)(1)(D) without delay for all computer programs covered by the exemption;<sup>3</sup>

The other underlying aspects of the exemption should remain the same or similar to those in the current temporary exemption. In particular:

- (1) “[T]he types of copyrighted works that need to be accessed” continue to include computer programs of all types, and including associated literary, audiovisual, and other works;
- (2) “[T]he physical media or devices on which the works are stored or the services through which the works are accessed” continue to include devices or machines capable of storing computer programs;
- (3) “[T]he purposes for which the works need to be accessed” continue to include the discovery and mitigation of security flaws, the advancement of academic knowledge about security, public awareness of security and security flaws, national security, and First Amendment-protected speech on those topics;
- (4) “[T]he types of users who want access” continue to include security researchers, both professional and amateur, in a variety of academic, industry, hobbyist, and other contexts;
- (5) “[T]he 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” remain those that underpin the current exemption—namely, (a) uncertainty about the scope of Section 1201’s built-in statutory exemptions related to security research<sup>4</sup> and (b) uncertainty about the scope of the unwarranted limitations in the current exemption, which we request that the Office address.

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<sup>3</sup> See 17 U.S.C. §§ 1201(a)(1)(D).

<sup>4</sup> See 17 U.S.C. §§ 1201(g), (j), (i).