



UNITED STATES COPYRIGHT OFFICE

## 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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The petitioner is the Center for Democracy & Technology (CDT), a non-profit advocacy organization dedicated to the advancement of democratic values in the digital age. The organization is located at 1401 K St NW, Suite 200, Washington, DC 20005. The contact for the organization is Ferras Vinh, who can be reached via email at [fvinh@cdt.org](mailto:fvinh@cdt.org) or by phone at (202) 407-8827.

## 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 July, CDT filed for a renewal of the current exemption for good-faith security research codified at 37 C.F.R. § 201.40(b)(7). However, as noted in our renewal petition, CDT believes that the exemption should be clarified and expanded to address public policy concerns under the authority granted to the Copyright Office under the Digital Millennium Copyright Act (DMCA).

The Copyright Office requested specific information concerning the nature of the expanded exemption. With that in mind, CDT believes that the following information may help the Office:

1. The types of copyrighted works that need to be accessed include computer programs of all types.
2. The physical media or devices on which the works are stored or the services through which the works are accessed include devices, machines, systems, and any media containing, using, or accessing computer programs.
3. The purposes for which works need to be accessed include good-faith security testing and research, which may entail some or all of the following: finding, repairing, or mitigating vulnerabilities or advancing academic or public knowledge and awareness of security vulnerabilities.
4. The types of users who want access include researchers and computer scientists of all kinds.
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 include the legal

liability surrounding the anti-circumvention provisions of the DMCA, the uncertainty and ambiguity associated with the existing statutory exemptions, and the uncertainty and ambiguity associated with the conditions and limitations in the current triennial exemption.

To address these barriers, CDT requests the removal of the following restrictions from the current exemption:

1. Removal of the limitation on security research to a “lawfully acquired device or machine” to limit the overextension of copyright law.
2. Removal of the requirement that circumvention under 37 C.F.R. § 201.40(b)(7)(i) and (ii) be “solely” for the purpose of good-faith security research to encourage academic research and protect the First Amendment rights of researchers.
3. Removal of the condition that circumvention “not violate any applicable law, including the Computer Fraud and Abuse Act of 1986” to reduce uncertainty and risk for security researchers.
4. Removal of the delay in the effective date of the exemption to allow researchers to continue ongoing projects without interruption and facilitate the discovery of critical security flaws.
5. Removal of the limitation of security research to the specific categories listed at 37 C.F.R. § 201.40(b)(7)(i)(A)-(C) to encourage research and account for future technological development.
6. Removal of the restriction of security research to the setting of a “controlled environment designed to avoid any harm to individuals or the public” to reduce ambiguity for researchers and limit the overextension of copyright law into tort law.
7. Removal of the limitation on the post-circumvention use of “information derived from the activity” to protect the First Amendment rights of researchers and to shield researchers from liability for the actions of independent third parties.