



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.

Petitioner:

Electronic Frontier Foundation

Contact Information:

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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.

A. Proposed Exemption

In 2015, the Register recommended, and the Librarian granted, an exception for

[c]omputer programs that enable smart televisions to execute lawfully obtained software applications, where circumvention is accomplished for the sole purpose of enabling interoperability of such applications with computer programs on the smart television.

This exemption was renewed without objection in 2018, and the Software Freedom Conservancy petitioned for its renewal in the current exemption cycle.

The Electronic Frontier Foundation (“EFF”) petitions the Librarian to clarify that this exemption includes computer programs on devices that are primarily designed to display software applications on a television, including applications that stream video delivered via the Internet, where such devices are not physically integrated into a television. Paradigmatic examples of these stand-alone streaming devices are the Roku line of products, the Amazon Fire TV Stick, and the Apple TV.

B. Introduction

Since 2010, the Librarian has granted exemptions to Section 1201(a)(1) for “jailbreaking” and “rooting” of various personal computing devices, allowing those ubiquitous devices to be modified in important and valuable ways without permission from the manufacturer. Over time, the Librarian has renewed the existing “jailbreaking” exemptions and granted exemptions for new classes of devices: smartphones, tablets and other mobile computing devices, smart TVs, and smart speakers. These prior exemptions reflect the importance of end users’ control over their personal devices, the value of independent software development as a fount of innovation for these devices, and the positive impact of jailbreaking on the personal computing world.

The current regulatory language does not define Smart TVs, and it’s unclear whether that exemption includes hardware devices that enable the viewing of video streams, along with other software applications, when such devices are not physically integrated into a television. Today, devices designed to run video streaming apps can either be integrated into a television or available as a separate physical device, often a box or “stick” that connects to a television. There is no relevant difference between integrated and non-integrated devices for purposes of Section 1201. Indeed, non-integrated devices like the Roku generally run the same apps as integrated smart TVs, such as Netflix, Hulu, and Amazon Prime Video. Both types of devices also offer the same additional functionality through “voice assistants” like Amazon Alexa, similar to stand-alone “smart speakers.”

Owners of streaming devices jailbreak them for many important and legitimate purposes, including to display additional channel information, connect the devices with other personal devices like smartphones over a home network, change the aspect ratio or resolution of the video display, add Web browsing functionality, use different remote controls or other input devices, and to stop unwanted collection of personal data.

The need and justification for adding new software to a streaming video device are the same regardless of whether that device is integrated into a television. Accordingly, we ask the Librarian to clarify that the exemption for “Smart TVs” applies to non-integrated video streaming devices.

Item B. Description of Proposed New Exemption *(cont'd)*

C. Description of Proposed New Exemption

1. The copyrighted works in question are computer programs that enable video streaming devices to execute other programs. These gatekeeper programs have various, sometimes overlapping, technical descriptions: operating systems, drivers, firmware, bootloaders, virtual machines, et cetera.
2. The devices on which these works reside are commonly referred to as “streaming devices.” Their main function is to run a variety of application programs, primarily video-streaming applications, that are displayed on a television.
3. The purpose for which the works need to be accessed is to add new application software to a device, or removing unwanted applications from the device.
4. Users who need to jailbreak or root these devices include end users who want to add or remove functionality, developers who seek to write and test new software, and persons concerned about the security of their devices and data who seek to install fixes not offered (or not yet offered) by the manufacturer or Internet service provider.
5. The barriers to these important activities include bootloader access controls that restrict the loading of alternative or modified operating systems, and operating system access controls that prevent the installation or removal of application software.