



POSITION PAPER

Section 1201 and the Right to Repair

Section 1201 of the Digital Millennium Copyright Act (DMCA) safeguards technological protection measures (TPMs) used in connection with the dissemination of copyrighted works against compromise. TPMs include digital locks that prevent unauthorized access to movies, music, books, articles, software, video games, works of visual art, and other copyrighted materials. Enacted in 1998, as an important part of the DMCA, section 1201 prohibits the circumvention of TPMs as well as trafficking in technologies that allow for circumvention. In addition to numerous statutory exemptions for things like security testing and research, section 1201 also provides for a triennial rulemaking process through which the U.S. Copyright Office routinely considers and adopts exemptions to the section 1201 protections. This balanced and flexible system has contributed to consumers today having a wealth of ways to safely access and enjoy all sorts of copyrighted works and creators having many new platforms to reach their audiences.

Overbroad “right to repair” mandates would open the door to widespread piracy of copyrighted materials.

Some organizations that often push for weakening copyright protections also advocate for laws that would sidestep the 1201 rulemaking process and establish broad “right to repair” mandates. While such mandates purport to make it easier for users of equipment and devices with digital access controls to override those controls and make repairs, the reality is that they would override section 1201 and effectively allow for the circumvention of TPMs that protect movies, music, video games, software, and other copyright materials. Congress must not enact any law that would open the door to widespread piracy and would dramatically alter how the public gets—or does not get access—to these works in the future.

Section 1201 access controls must be protected to preserve intellectual property rights, as well as enable continued public access to their favorite copyrighted works.

Section 1201 strikes a balance between the needs of consumers and copyright owners, and it has allowed innovative companies to provide consumers with a wide array of content delivery systems at a variety of price points. If indistinct exceptions to 1201’s anti-circumvention provisions are enacted through “right to repair” legislation, the carefully administered balance established by Congress in section 1201 would be undermined and piracy of copyrighted works would proliferate. We have no issue with legislation that is narrowly targeted to the repair of devices, like tractors and phone batteries. But legislation that is not narrowly targeted would undo the carefully crafted balance in section 1201 and would have a significant negative impact on the creative industries and professional

creatives who rely on section 1201 for their livelihoods.

It is critical that any “right to repair” legislation be narrowly tailored and reflect the following principles:

- The protections afforded by section 1201—which allow copyright industries to make their works widely available to the public while also preventing the growth of illicit enterprises designed to profit from enabling unauthorized access to copyright protected works—must not be compromised by laws that would allow for broad exceptions to section 1201 and result in the widespread availability of tools that would enable mass infringement.
- To the extent exemptions to section 1201 are warranted, stakeholders who support those exemptions should use the existing triennial rulemaking process to enact them.
- Any laws implicating copyrighted works and section 1201 should recognize that the circumvention and trafficking prohibitions contained in section 1201 have been fundamental to the development of today’s vibrant digital marketplace in entertainment content, which has evolved to the great benefit of American consumers.