

*This is a Word document that allows users to type into the spaces below. The comment may be single-spaced, but should be in at least 12-point type. The italicized instructions on this template may be deleted.*

UNITED STATES COPYRIGHT OFFICE



**Long Comment Regarding a Proposed Exemption Under 17 U.S.C. § 1201**

*Please submit a separate comment for each proposed class.*

***NOTE: This form must be used in all three rounds of comments by all commenters not submitting short-form comments directly through regulations.gov, whether the commenter is supporting, opposing, or merely providing pertinent information about a proposed exemption.***

***When commenting on a proposed expansion to an existing exemption, you should focus your comments only on those issues relevant to the proposed expansion.***

**[ ] Check here if multimedia evidence is being provided in connection with this comment**

*Commenters can provide relevant multimedia evidence to support their arguments. Please note that such evidence must be separately submitted in conformity with the Office's instructions for submitting multimedia evidence, available on the Copyright Office website at <https://www.copyright.gov/1201/2018>.*

**ITEM A. COMMENTER INFORMATION**

*Consumers Union  
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**ITEM B. PROPOSED CLASS ADDRESSED**

*Class 8 – Computer Programs – Video Game Preservation*

**ITEM C. OVERVIEW**

*[See below]*

**ITEM D. TECHNOLOGICAL PROTECTION MEASURE(S) AND METHOD(S) OF CIRCUMVENTION**

*[See below]*

**ITEM E. ASSERTED ADVERSE EFFECTS ON NONINFRINGEMENT USES**

**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 Web site and use by Copyright Office staff for purposes of the rulemaking proceeding conducted under 17 U.S.C. § 1201(a)(1). NOTE: No other advisory statement will be given in connection with this submission. Please keep this statement and refer to it if we communicate with you regarding this submission.

**Supporting Comments for New Exemption Under 17 U.S.C. § 1201**  
**Class 8 – Computer Programs – Video Game Preservation**  
**December 18, 2017**

Consumers Union, the policy and mobilization division of Consumer Reports,<sup>1</sup> submits this statement in support of proposed Class 8, to expand the current exemption for video game preservation, to cover a broader range of video games, including games with online multiplayer features.<sup>2</sup>

As we have stated in previous submissions to the Copyright Office, and in our Digital Testing Standard launched in March 2017,<sup>3</sup> when a consumer purchases a product, the consumer should obtain genuine ownership of the product and its parts, including the ability to make effective use of the product, and the ability to effectively resell it.<sup>4</sup> We believe consumers should have the ability to use the products they have purchased in all these respects, as they see fit. We have successfully made this case with respect to mobile devices, both in Congress and before the Copyright Office. And we believe it also applies here.

Congress enacted the prohibition in section 1201 of the Digital Millennium Copyright Act in response to concern that the digital age would otherwise usher in a massive deluge of copyright infringement. But this response has proven, with experience, to be overbroad. Its proliferating use to block access to software that enables and governs – and restricts – the functioning of everyday consumer products in which it is embedded, and their interoperability with other products, is causing far-reaching harm to fundamental consumer rights.

We recognize the value of copyright law in nurturing and protecting incentives for innovation, both generally and in particular with respect to computer software. At the same time, it is important that the monopoly rights conferred on creators by the copyright laws be kept

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<sup>1</sup> Consumers Union is the policy and mobilization division of Consumer Reports, an expert, independent, non-profit organization whose mission is to work for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves. It conducts its policy work in the areas of antitrust and competition Policy, financial reform, food and product safety, privacy and data security, telecommunications reform, health care reform, and other areas. Consumer Reports is the world's largest independent product-testing organization. Using its dozens of labs, auto test center, and survey research department, the non-profit organization rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 7 million subscribers to its magazine, website, and other publications.

<sup>2</sup> We are also submitting supportive comments on other classes. The fact that we do not submit comments as to any particular class should not be taken to suggest that we oppose the recommendations for that class, or that we do not support them in whole or in part.

<sup>3</sup> The Digital Testing Standard (theDigitalStandard.org) was launched on March 6th, 2017 and is the result of a collaboration with our cybersecurity partners, Disconnect, Ranking Digital Rights, and the Cyber Independent Testing Lab. The Standard is designed to hold companies accountable and equip Consumer Reports and other organizations to test and rate products for how responsibly they handle our private data. This is a collaborative and open source effort. The Standard is designed to empower consumers to make informed choices about the connected products, apps, and services consumers use every day.

<sup>4</sup> *The Standard*, THE DIGITAL STANDARD, <https://www.thedigitalstandard.org/the-standard>.

appropriately contained, so they do not spill over into broader, unjustified and counterproductive restraints on competition and consumer choice, and do not undermine long-established, fundamental rights and expectations of consumers regarding their ownership and dominion over the products they have lawfully acquired. Beyond these immediate effects on consumer rights and expectations, broader innovation is impeded if a product's manufacturer is given inordinately sweeping power to control how it is used once it has been released into the marketplace.

The same kinds unjustified harm to consumers that resulted from blocking access to video game software for purposes of extending the useful life of those games are also present with respect to the broader range of video games. We therefore urge the Copyright Office to look favorably on recommendations to extend the current exemption to these other video games. We would also urge clarifying or extending the exemption, as feasible, to enable consumers to access the software changes in order to continue playing the games.

Respectfully,

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#### **DOCUMENTARY EVIDENCE**

*[See above]*