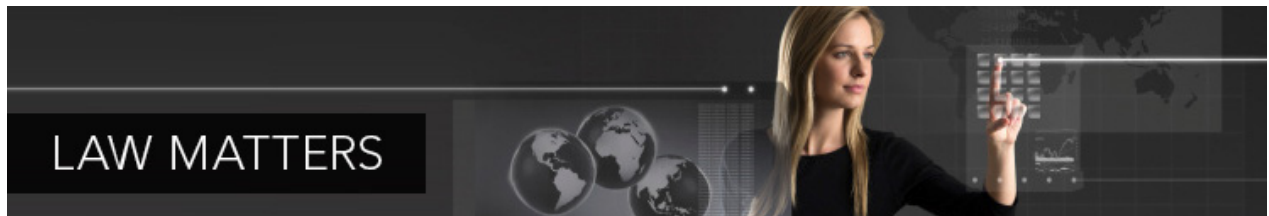


# 2015 DMCA Exemptions In Detail: When Is It OK to Technologically Circumvent Copyright Protections?

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The Digital Millennium Copyright Act (DMCA) prohibits the public from breaking any encryption or physical lock to access copyrighted material. Every three years, the Library of Congress offers exemptions to that part of the law, defining certain circumstances under which it is legal to circumvent those protections. The LOC decides on exemptions by a long process involving public comments, responses, and hearings.

On October 28, 2015, the LOC reported a new set of regulations regarding exemptions to the DMCA provision that prohibits circumvention of technological measures that control access to copyrighted works. The new rules are effective through October 2018.



## Summary of exemptions

The previous ability to unlock cell phones has been extended to tablets, smartwatches, and smart TVs.

This year's rule allows owners of 3D printers to disable software that forces them to buy the plastic "ink" from the printer's manufacturer.

The new exemptions allow unlocking software embedded in implanted medical devices. In addition, the LOC said it is now legal for owners to circumvent controls on computer systems in cars and farm equipment "for the purposes of lawful diagnosis and repair, or aftermarket personalization, modification, or other improvement."

The public now can act without fear of violating the DMCA with respect to certain circumvention activities. However, restrictions remain, since consumers still cannot burn DVDs and Blu-ray discs to a computer file, as they legally can with CDs. Likewise, consumers still cannot legally modify video game consoles like Xbox or PlayStation. Similarly, e-readers are still illegal to unlock.

### **Details of the new exemptions**

#### *1. Classes 1 to 7 – Audiovisual Works – Educational and Derivative Uses*

Motion pictures (including television shows and videos), where circumvention is undertaken solely in order to make use of short portions of the motion pictures for the purpose of criticism or comment in the following instances:

- (i) For use in documentary filmmaking,
- (ii) For use in noncommercial videos (including videos produced for a paid commission if the commissioning entity's use is noncommercial),
- (iii) For use in nonfiction multimedia e-books offering film analysis,

(iv) By college and university faculty and students, for educational purposes,

(v) By faculty of massive open online courses (MOOCs) offered by accredited nonprofit educational institutions,

(vi) By kindergarten through 12th-grade educators, for educational purposes,

(viii) By educators and participants in nonprofit digital and media literacy programs offered by libraries, museums and other nonprofit entities with an educational mission.

## *2. Class 9: Literary Works Distributed Electronically – Assistive Technologies*

Literary works, distributed electronically, that are protected by technological measures that interfere with screen readers or other applications or assistive technologies,

(i) When a copy of such a work is lawfully obtained by a blind or other person with a disability, or

(ii) When such work is a nondramatic literary work, lawfully obtained and used by an authorized entity pursuant to 17 U.S.C. 121.

## *3. Classes 11 to 15: Computer Programs That Enable Devices to Connect to a Wireless Network That Offers Telecommunications Services (Unlocking)*

(i) Computer programs that enable the following types of wireless devices to connect to a wireless telecommunications network, and the device is a previously used device:

(A) Wireless telephone handsets (i.e., cell phones);

(B) All-purpose tablet computers;

(C) Portable mobile connectivity devices, such as mobile hotspots, removable wireless broadband modems, and similar devices; and

(D) Wearable wireless devices designed to be worn on the body, such as smartwatches or fitness devices.

*4. Classes 16 and 17: Jailbreaking – Smartphones and All-Purpose Mobile Computing Devices*

Computer programs that enable smartphones and portable all-purpose mobile computing devices to execute lawfully obtained software applications.

*5. Class 20: Jailbreaking – Smart TVs*

Computer programs that enable smart televisions to execute lawfully obtained software applications.

*6. Class 21: Vehicle Software – Diagnosis, Repair or Modification*

Computer programs that are contained in and control the functioning of a motorized land vehicle such as a personal automobile, commercial motor vehicle or mechanized agricultural vehicle, when circumvention is a necessary step undertaken by the authorized owner of the vehicle to allow the diagnosis, repair or lawful modification of a vehicle function; and where such circumvention does not constitute a violation of applicable law, and provided, however, that such circumvention is initiated no earlier than 12 months after the effective date of this regulation.

*7. Class 22: Vehicle Software – Security and Safety Research; Class 25: Software – Security Research; Proposed Class 27A: Medical Device Software – Security and Safety Research*

(i) Computer programs, where the circumvention is undertaken on a lawfully acquired device or machine on which the computer program operates solely for the purpose of good-faith security research and does not violate any applicable law, and provided, however, that, except as to voting machines, such circumvention is initiated no earlier than 12 months after the effective date of this regulation, and the device or machine is one of the following:

(A) A device or machine primarily designed for use by individual consumers (including voting machines);

(B) A motorized land vehicle; or

(C) A medical device designed for whole or partial implantation in patients or a corresponding personal monitoring system, that is not and will not be used by patients or for patient care.

*8. Class 23: Abandoned Software – Video Games Requiring Server Communication*

(i) Video games in the form of lawfully acquired computer programs, when the copyright owner or its authorized representative has ceased to provide access to an external computer server necessary to facilitate an authentication process to enable local gameplay, solely for the purpose of:

(A) Permitting access to the video game to allow copying and modification of the computer program to restore access to the game for personal gameplay on a personal computer or video game console; or

(B) Permitting access to the video game to allow copying and modification of the computer program to restore access when necessary to allow preservation of the game in a playable form by an eligible library, archives or museum.

(ii) Computer programs used to operate video game consoles solely to the extent necessary for an eligible library, archives or museum to engage in the

preservation activities described in paragraph (i)(B).

#### *9. Class 26: Software – 3D Printers*

Computer programs that operate 3D printers that employ microchip reliant technological measures to limit the use of feedstock, when circumvention is accomplished solely for the purpose of using alternative feedstock.

#### *10. Class 27B: Networked Medical Devices – Patient Data*

Literary works consisting of compilations of data generated by medical devices that are wholly or partially implanted in the body or by their corresponding personal monitoring systems, where such circumvention is undertaken by a patient for the sole purpose of lawfully accessing the data generated by his or her own device or monitoring system and does not constitute a violation of applicable law.

\*

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