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CENTER FOR DEMOCRACY  
& TECHNOLOGY

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April 17, 2015

The Honorable Ron Wyden  
United States Senate  
221 Dirksen Senate Office Bldg.  
Washington, D.C., 20510

Dear Senator Wyden,

The Center for Democracy & Technology (CDT) thanks you for introducing S. 990, the "Breaking Down Barriers to Innovation Act." This legislation would make common-sense and much-needed reforms to the existing process for seeking exemptions from the prohibition of circumvention of technological protection measures under Section 1201 of the Digital Millennium Copyright Act of 1998 (DMCA). These reforms would make it easier to rely on exemptions that the Librarian of Congress already has granted and to secure exemptions that advance important public interests without infringing copyright in protected works.

Under current law, a researcher, hobbyist, or consumer can violate 1201's anti-circumvention provision even if that circumvention results in no copyright infringement. This potential civil or criminal liability chills a wide range of legitimate activity, including the work of security researchers seeking to uncover and remedy security vulnerabilities that place at risk the users of computers, networks, automobiles, medical devices, and nearly any consumer electronics product with embedded software or network connectivity. Multiple petitioners are seeking 1201 exemptions in the current triennial review cycle. Even if they succeed, however, those exemptions must be addressed anew in three short years.

The Breaking Down Barriers to Innovation Act will remove unnecessary obstacles faced by all petitioners for 1201 exemptions and in particular for persons with disabilities and computer security researchers. The legislation requires the Librarian of Congress to consider the impact of any prohibition on accessibility of works for persons with disabilities and makes explicit that a person is adversely affected by 1201's prohibition on circumvention if the use she intends to make of a protected work is noninfringing. It also creates a presumption that a previously granted exemption should remain in place and makes important changes to the existing statutory exemptions for reverse engineering, encryption, privacy and security testing. These elements are key to improving 1201's existing exemptions and exemption process.

CDT and others are working through the current Section 1201 triennial review to secure a meaningful exemption for computer security researchers performing vital work to improve the security and safety of computers, networks, and devices. However, the limitations of that process must be addressed and corrected. Currently, a researcher who discovers a vulnerability is subject to extensive civil and criminal penalties under the DMCA, the Computer Fraud and Abuse Act, and the Electronic Communications Privacy Act. In the



face of that liability, the safest course for a researcher is often to remain quiet, leaving particular devices and networks – and the Internet as a whole – less secure. The Breaking Down Barriers to Innovation Act is a thoughtful and welcome step to making the world safer for computer security research and, as a consequence, for all Internet users.

Sincerely,



Erik Stallman  
Director, Open Internet Project  
Center for Democracy & Technology