

Reply Comments to comments I filed before Feb 10

To Whom It May Concern At U.S. Copyright Office:

I am filing reply comments at this time on why I think the Copyright Office should grant a DMCA exemption for general-purpose computers for jail-breaking. I recently submitted an article DRM Gives Companies Security From Innovation which explained Apple Inc., was not happy when the Copyright Office 3 years ago granted a DMCA exemption for jailbreaking smart phones. I will use some examples provided by him and some of my own towards the end. Cory Doctorow published the article I mentioned on BoingBoing.com. I will be requesting an extension again of the DMCA exemption for jail-breaking smart phones and an extension of that exemption to cover tablets. In addition I seek a DMCA exemption for bypassing DRM on general-purpose computers. Below I will explain just why the DMCA exemption for smart phones is so important and why I think it should extend to tablets with examples to support my argument.

On the topic of general-purpose computers I'd like to add that over the years some companies like Apple have taken away features from their operating system. When Mac OS X first launched it ran on PowerPC processors and had a Mac OS 9 Classic Environment, which is today incompatible with the Intel, based Macs. Even if Apple wanted to bring Classic to the Macintels it would technically not work. Apple officially dropped support for Classic Environment in Mac OS X Leopard (10..5). but by then the migration to Mac OS X was complete and most apps that were Mac

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OS 9 only had been updated for OS X. Apple during the Intel transition though had

another compatibility issue on its hand getting PowerPC coded Mac OS X apps to run in OS X. An earlier anti-feature by the way from Mac OS X Tiger was the removal of DVD ripping as a feature of Apple's DVD Player application in Mac OS X Tiger that was offered in Panther. To resolve compatibility issues of PowerPC OS X apps Apple created the Universal Binary system saying developers can code apps as UB to work in PowerPC and/or Intel without its Rosetta emulation system. At the same time they would have Intel native Mac apps and PowerPC coded Mac apps. Intel native would already be fine but PowerPC versions in OS X would need Rosetta emulation which was removed from Mac OS X in Lion. Of course Lion also removed the Front Row app by default. In Lion it seems Apple has started iPad-izing the Mac OS. The removal of the Classic Environment was an acceptable and understood anti-feature in newer Macs and in some ways removal of Rosetta might make sense if enough people are on UB or Intel native apps only. At the same time Apple has transitioned all its apps gradually from 32 bit to 64 bit applications and made its apps fully in its Cocoa environment. Now they want to end X11 and Java support in OS X as well as Adobe Flash if they could.

Users can and should be able to hack into their smart phones, tablets or computers to re-enable or enable purposefully disabled features. One reason for smart-phone users to jail-break their handsets as I will describe is to run non vendor approved software like iOS apps not available in Apple's App Store or jail-breaking one's phone to work with another wireless carrier. It is a shame the FCC has not extended the Carterfone ruling, which mandated wholesale open access on the wire-line industry to cellular

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phones. If you recall that ruling paved the way for the innovation of the fax machine.

I often wonder how much innovation has been held back by wireless carriers control over what handset equipment can exclusively run on their networks?

Mr. Doctorow opens his article by mentioning another article about Apple's new Gatekeeper technology, which defaults to warning users of Apple's new Mountain Lion (Mac OS 10.8) that software from companies that haven't officially been recognized by Apple should not be installed even though users can still choose to override this setting or turn it off.

Mr. Doctorow mentioned he had one problem with that piece. The author of that article wrote "The truth is Macs don't currently suffer from malicious software and DRM-esque lock-outs are always circumvented so what's the point in of a DRM-esque system for malware protection?" The fact is as Mr. Doctorow points out DRM is indeed circumvented by copyright infringers and malware infringers but the author of the piece he quotes has misunderstood the primary value of DRM to technology companies because countries' laws prohibit breaking DRM even if your not doing anything illegal, DRM gives companies the right to sue competitors who make compatible products and services.

The law has always recognized that interoperability is good for competition, markets and the public. From generic windshield-wiper blades and hubcaps to third- party hard-drives and keyboards and inject toner, and software like Pages, and Keynote, the law recognizes that there is a legitimate reason to reverse-engineer a competitor's products and make new products that replace, expand and augment them.

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Companies don't like this though. It interferes with the "razor-blade" business model of subsidizing one part of a product and charging high margins on some other part. It undermines efforts to corner markets and freeze out disruptive innovation. It lowers prices and forces you to spend more money on R&D to get the next product out because the profits have started to fall on the old products. But these are not bugs they are features. High prices on inkjet cartridges and proprietary cables and other consumables and accessories hold us back from realizing the full utility of our property. Allowing wireless carriers to lock our handsets to prevent the introduction of VOIP and tethering software is good for teleco investors but bad for those of us who buy their products, and it removes the incentive to improve voice call-quality to compete with VOIP. Artificially prolonging the profitability of last year's invention means that this year's invention doesn't get made as quickly – or at all.

Locking devices to only accept software that has been blessed by the vendor has been a profitable yet anti-competitive strategy. It's allowed Apple's iOS App Store to command high commissions on sales, and to expand those commissions to cover transactions after the initial sale (if you spend money within an iOS App, Apple takes 30% of that transaction as well —like a cash register manufacturer demanding a slice of each transaction after you've bought the register). It allows the company to freeze out apps it doesn't like, even if customers want them. It undermines copyright by making it illegal for someone to create and sell their copyrighted software to willing buyers without the approval of the company that made the hardware the software will run on —because the unblessed software won't run without breaking the DRM and breaking DRM is illegal.

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Legitimate, lawful transactions are different from copyright infringement or disseminating malicious software. Malware writers aren't worried that they'll get sued for breaking DRM –they're already breaking the law. Copyright infringers don't need to raise capital to produce software, and they don't need to have easy-to-track merchant accounts for their services, because they offer those services for free, by and large.

Whether or not Apple plans to expand its digital locks from its iOS platform to the Mac OS but if they do it won't be because they don't see any benefits in DRM like measures. They obviously do which is why they asked the Copyright Office to reject a DMCA exemption for jail-breaking the iPhone three years ago, and its why their objecting to renewing the exemption and extending it to tablets like the iPad. By the way these exemptions are far more narrow than the freedom that the law, absent rules protecting DRM would give to competitors. When the Copyright Office grants a three-year jail-breaking exemption, it doesn't make it legal to make, describe sell or give away tools to jailbreak. They effectively only make it legal for you to figure out how to jailbreak your phone or tablet.

Therefore I humbly request again that the Copyright Office grant an extension of its existing DMCA exemption for smart phones and expand it to tablet computers which are quickly becoming popular mobile devices. Tablet users also deserve the right to be able to legally find out how to jail-break their devices and do so to run non vendor approved software from developers that companies like Apple have refused to make available via its iOS App Store for a variety of reasons like the developer

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providing similar functionality as that provided by the vendor and said developer's

app competing with the vendor's app. For example, lets say an iOS developer creates an app competing with Apple's Siri application that might even work better than Siri and Apple doesn't want users to be able to run this app they may deny the app whether consumers want access to the app or not.

Going back to my earlier point of why smart phones are often jail-broken it is either for use with another carrier often not yet supported by the phone's manufacturer or to run non vendor approved apps like apps Apple is refusing to make available in its iOS App Store. When the Free Software Foundation started talking about the DRM in Apple's iPhone, iPod Touch and later the iPad some people wanted them to drop it saying these mobile devices aren't general purpose computers but lifestyle devices but the truth is they are indeed general purpose computers as are Apple Macs. Now it seems since the launch of Mac OS X Lion (Mac OS 10.7) Apple is seeking to iPad-ize Mac OS X and is moving toward a future where the only way to install apps on a Mac is through digital distribution platforms like the Mac App Store.