

*Before the*  
**Library of Congress  
Copyright Office  
Notice of Inquiry  
In re Exemption to Prohibition on  
Circumvention of Copyright  
Protection Systems for Access  
Control Technologies**

Reply Comments of:

Michael Weisman

In support of Comment #3 by The Wireless Alliance & Robert Pinkerton, represented by Jennifer Granick, Stanford Center for Internet and Society Cyberlaw Clinic.

**Class of Works Identification:**

I respectfully submit the following reply comments in support of the exemption requested in Comment #3 by The Wireless Alliance & Robert Pinkerton which was submitted in connection with the Copyright Offices' October 3, 2005 Notice of Inquiry. The commenting parties proposed an exemption from the Section 1202(a)(1) prohibition on the circumvention of technological measures that control access to a copyrighted work for the following class of works:

Computer programs that operate wireless telecommunications handsets. (Mobile firmware)

**Summary of Argument:**

I travel frequently to Europe and would like to be able to use the phone I have purchased in the U.S. on the European network by switching out the SIM card and replacing it with a SIM card programmed with a local number. In order to take advantage of all the features and a local phone number, I need to unlock my phone.

**Factual Support:**

I am a busy person who frequently travels to the European Union (EU) for study, business and for leisure travel. Because on my trips, I need to be in touch with my office, friends and colleagues, I have found it necessary to have a cell phone that functions in the EU. I also need to have a phone number where people can reach me to set up meetings, make dinner plans or inquire about events. When I travel to Europe, I usually buy a SIM card from a local H&M store, which typically costs 10 Euros, and includes a local phone number, voicemail service, and about 30 minutes talk time.

I have also found it essential to have a local phone number when I travel for business because many people won't call me back if they have to pay international phone rates. This is not only necessary for business associates to be able to reach me, but it's also saved my skin on more than one occasion. One example that comes to mind was when I was on a bicycle trip from Amsterdam to Bruges. I found myself lost and off my route slightly, but knew the name of the nearest town. Because I had a local number and cellular service, I simply looked up a hotel in my guidebook, called ahead and had a room reserved for me. I could not have done this without a return phone number, and if I had waited until I arrived in the evening to reserve a room, it's likely all the rooms would have been booked.

By converting to a local number in Europe, I'm also able to take advantage of the more advanced mobile network features, like MMS messages, area text messaging, foreign language voicemail prompts etc. Being able to simply buy a new SIM card when I travel to Europe and pop it into my phone seems like a good solution. The only problem is that most American cellular phone companies "lock" their phones so I can't swap out the SIM card and get a local European number when I'm traveling in the EU.

It seems to me that if a customer buys a phone, he should be able to use the phone as the manufacturer intended it to be used, and that includes being able to access all the features the phone is capable of using, including the ability to swap out the SIM card when one travels. It seems ridiculous that I would have to buy a completely separate phone for when I travel to Europe because my cell phone provider won't unlock my phone. Europeans do not have this same problem. The EU and member states all have rules requiring that phones be unlocked. A provider must unlock the phone as soon as the customer has paid the equivalent of the cost subsidy, typically no more than 3 months.

I am a T-Mobile customer. The company has a policy of unlocking your phone on request for no charge. I just used this service this past September to unlock a new phone before I flew to Europe. This policy should be uniform across all providers; it would be good for competition because it would bring US policy in line with a primary competitor, the EU. The field of competition is global, not local. If the US continues to have restrictive unlocking policies, what is there to stop me from buying my phone in Europe and bringing it back to the US? Since the EU is one of our major economic competitors, our policies should be at the least congruent with EU policies.