

**Name:**

Tim Marman

**Responding to the Following Class of Works:**

This reply comment supports a DMCA circumvention exemption for the class of works described in Initial Comment #3 by “Jennifer Granick, The Wireless Alliance and Robert Pinkerton”:

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

**Summary of the Argument:**

I believe that an exemption for the class of works named above is necessary to allow mobile communications consumers to purchase the phone of their choice. I chose to purchase a phone that was exclusively offered by a carrier other than my own, and was forced to unlock the phone in order for it to function on my service provider’s network. I believe that users should be able to unlock their own phones so that they can choose both the phone and the plan that suits them best.

**Factual Support for the Argument:**

In February 2005, I was in the market for a Windows Mobile SmartPhone. Very few of these phones were available for purchase in the U.S., and most of the ones that were available are “flip phones,” which I did not want. I managed to find a particular phone that matched my criteria – the Audiovox SMT5600, which was available exclusively on Cingular’s network.

The Audiovox SMT5600 had originally been offered by AT&T, but after AT&T merged into Cingular, Cingular pulled it in favor of the Motorola flip SmartPhone. As the phone was not being offered at either Cingular or former AT&T stores, I purchased it through Amazon without signing a Cingular service contract. I paid the full, unsubsidized price (a little over \$400). My carrier at the time was T-Mobile, and I bought the phone with the expectation of using it on the T-Mobile network.

The phone arrived locked so that it would only operate on Cingular’s network. In order to get the phone to function, I had to unlock the phone. The device stopped working less than 2 months later so I sent it back to Audiovox for service. Instead of fixing it, they replaced it with a new, locked device – providing me with another phone that was useless with my T-Mobile plan. This put me in the unfortunate position of having to unlock the phone yet again so that I could use it.

In the end, even though I paid the unsubsidized price for the phone and should have received the phone in working condition, I still had to spend time and money to unlock it

in order for it to work. My biggest complaint with this is that I'm not in control of the situation – that is, if the phone breaks again or I purchase a new phone offered by a service provider other than my own, I have no choice but to unlock it. Although I would prefer that phones would not be locked at all, the ability to unlock phones is important to those like me who purchase the phone they want, regardless of the carrier that offers it. If I were not allowed to unlock my phone, I would be restricted in my choice of phone by my choice of service provider, or vice versa, and that seems unfair.