

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 COMMENT OF:

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IN SUPPORT OF COMMENT #3 BY JENNIFER GRANICK, THE WIRELESS ALLIANCE & ROBERT PINKERTON**CLASS OF WORKS IDENTIFICATION:**

I respectfully submit the following comment in response to Comment #3 by The Wireless Alliance and Robert Pinkerton, represented by Jennifer Granick, Stanford Center for Internet and Society Cyberlaw Clinic, 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

I wanted to use my GSM-enabled phones for a planned trip to Europe. I contacted our U.S. mobile service provider for help in unlocking our devices, to make them usable on a European network. The carrier told me that under no circumstances could I unlock the phone, and that my only option was to pay the prohibitively high international roaming rates for calls using their existing network. As a result, I was unable to use my phone during my trip, which created communications problems and posed a significant inconvenience.

ARGUMENT AND FACTUAL SUPPORT

Recently, my wife and I planned a 10-day trip to Italy to celebrate our Eighth Wedding Anniversary. To ease our ability to communicate with people overseas, we wanted to bring our GSM-enabled phones with us. Before leaving, I contacted my U.S. wireless carrier, Cingular, to inquire about getting my phone to function in Italy by having its software codes unlocked.

Getting in touch with Cingular to discuss the issue of unlocking my phone was the first hurdle. I tried contacting the company via email and through phone calls to their regular customer service number and also their business support line. Email did not work, and my telephone attempts were frustrating. At one point, after being transferred and misdirected through different areas of telephone support, it took three hours before I finally reached a representative willing to discuss my issue. All tolled, I spent probably 20 hours on the phone with Cingular attempting to find someone who knew what I was talking about *and* was willing to actually answer my questions.

In speaking with several Cingular representatives, I was given differing and confusing information about unlocking my GSM-enabled phone:

- One Cingular rep told me that it was not possible for Cingular to provide the codes for unlocking the phones at all;
- A second Cingular rep told me to call the manufacturer, Motorola, about unlocking the phone. I tried that, and Motorola told me that they would have to receive a request for the unlock codes and permission from Cingular (Cingular had to request the unlock codes from Motorola, who would give them back to Cingular who could then give them to me);
- After talking with Motorola, a third Cingular rep was more understanding, but informed me that Cingular would not provide codes to unlock the phones under any circumstances. The rep mentioned that she had tried to help another customer to elevate the same issue through managers on a previous occasion, but that request for the unlock codes had ultimately been denied as well. She was apologetic, but mentioned repeatedly that it was corporate policy never to unlock the phones.

As a result of these obstacles, I could not use my mobile phone on the trip, as I was unwilling to pay the exorbitant rates Cingular would have charged for international roaming calls. Not having our phones in Europe made it more difficult to communicate with friends that were meeting us in Rome, and it generally slowed down our communication. Not only would having the phone have made it easier to meet people at various times, but it would also have allowed us to effectively arrange accommodations in the different locales we had planned on visiting. At one point, due to our lack of communication ability, we missed our chance to make reservations for our stay in Florence. Moreover, without phone service, we were unable to make reservations at several museums and had a more difficult time finding taxi services.

What made this all the more frustrating was that we had fulfilled our contractual obligations to Cingular, and were customers in good standing who had purchased GSM-enabled phones with our service plan, phones that *could* have been used in Italy.

In the end, it seemed to me that there was no reason to prevent us from using our phones overseas other than pure greed (ie, forcing us to utilize our U.S.-based Cingular service card and to pay them international roaming charges). If we were allowed to unlock our phones, it would greatly facilitate our international travel.