

Name:

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Class of Works Being Responded-To:

I respectfully submit the following reply comment in support of 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 of the argument:

A cell phone lock prevented me from using my phone overseas until I complied with T-Mobile's non-publicized 90-day waiting period, causing considerable expense and inconvenience. If I could unlock the phone, this problem would have been avoided.

Factual support for the argument:

In April 2005, after researching what was available from the major cell phone providers in the SF Bay Area, I decided to subscribe to service from T-Mobile. I wanted a tri- or quad-band GSM phone I could use in France and Italy, as well as in the U.S. At my local T-Mobile store, the sales representative verbally assured me that I would have no problem using a SIM purchased from an Italian or French cellphone service provider in the Motorola V180 tri-band phone I selected.

After arriving in Italy a few weeks later, I purchased a Vodafone SIM, whose purchase price (approximately \$25) included prepaid minutes. I inserted the SIM in my T-Mobile phone, only to discover I couldn't use it because the phone was locked to T-Mobile. Having access to email, I sent off an inquiry to T-Mobile customer service. The answer I got back was that one had to be a T-Mobile customer "in good standing" for at least 90 continuous days before T-Mobile would consent to provide an unlock code.

I should have been told of this restriction when I signed up for service, which came with a 1-year minimum service contract requirement and early termination fees. Meanwhile, I also had on my hands an Italian SIM I couldn't use and couldn't return (sales are final in Italy unless the item is demonstrably defective, and this one wasn't). The only viable alternative I had was to buy an Italian-market cellphone for \$75--they are all unlocked right out of the box--in order to be able to use the SIM and make calls without incurring expensive international roaming charges.

After I returned home and qualified for T-Mobile's 90-day waiting period, I requested an unlock code and the company issued one about a week later. It worked satisfactorily. However, if I were able to unlock my own phone, I would not have had to purchase the Italian cellphone.