

Before the
**U.S. COPYRIGHT OFFICE
LIBRARY OF COMMERCE**

**In the matter of exemption to prohibition on circumvention of copyright protection systems
for access control technologies**

Docket No. RM 2008-08

Comment of Mozilla Corporation

Submitted by:



Harvey Anderson
Vice President & General Counsel
Mozilla Corporation
1981 Landings Drive, Building K
Mountain View, C.A. 94043-0801
(650) 903-0800 x316
handerson@mozilla.com

Pursuant to the Notice of Inquiry of Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, Mozilla Corporation (“**Mozilla**”) submits the following comments in support of the comments submitted by the Electronic Frontier Foundation and respectfully asks that the Librarian of Congress exempt the following class of works from 17 U.S.C. §1201(a)(1)’s prohibition on the circumvention of access control technology for the period of 2009-2012: computer programs that enable wireless telephone handsets to execute lawfully obtained software applications, where circumvention is accomplished for the sole purpose of enabling interoperability of such applications with computer programs on the telephone handset.

1. The Commenting Party

Mozilla is dedicated to ensuring that the Internet is a public resource that remains open and accessible to all. Since 1998, Mozilla has worked together with tens of thousands of volunteers around the world to ensure that the Internet is developed in a way that benefits everyone. To achieve this goal, Mozilla coordinates these members and volunteers to create open source software products such as the Mozilla Firefox web browser (“Firefox”).

Firefox 1.0 was released in 2004, and it became an instant success. Firefox was downloaded over 100 million times in its first year. New versions of Firefox have been regularly released since then, and keep setting new records. By the end of 2008, Firefox reached 20% of the

worldwide market share. The popularity of Firefox has brought choice in browsers back to users. It has accelerated innovation and improved the Internet for everyone.

Mozilla's technology and products belong to everyone. Not only are Mozilla's products freely available, but Mozilla's entire code base is a shared public resource. Many other products use Mozilla technology for their own products, both free and commercial.

2. "Jailbreaking" Cellular Phone Handsets

Mozilla supports the Electronic Frontier Foundation's ("EFF") comment in support of exempting computer programs that enable wireless telephone handsets to execute lawfully obtained software applications, where circumvention is accomplished for the sole purpose of enabling interoperability from 17 U.S.C. §1201(a)(1)'s prohibition on the circumvention of access control technology, because it will: (a) permit cellular phone users to install software of their choice; (b) promote open access to the Internet.

A. Promoting Choice in Installing Software on Cellular Phone Handsets

Some cellular phone providers have used technical measures to prohibit the users who purchase their telephone handsets from loading certain legitimately obtained software programs onto them. These companies instead require users to purchase their software from their preferred providers to run on the devices. By controlling the software that can be installed on these cellular phones, these companies can limit and control the type of programs and functionality that is available to users of their devices.

They also effectively prohibit users from developing their own software and installing it on the devices. If the software made available by the telephone handset manufacturer does not meet a user's needs, the user is technically prohibited from developing their own program and installing it on the device unless the individual becomes an approved provider and offers their program through the manufacturer's store.

In order to install legitimate software distributed outside the carrier or phone vendor's application store, users who purchase these devices are required to decrypt and modify, or "jailbreak," their phones. This creates a chilling effect on users and on innovation. Users do not feel they have the choice of using open source and other legitimately obtained software programs or software they develop on their telephone handsets, because they are concerned about breaching the law. Permitting this exception will give users a choice to install the software they choose on the devices they purchase.

B. Promoting Open Access to the Internet

Telephone handsets have increasingly become complex and sophisticated devices that are in essence computers in a different form-factor. To the extent these devices increasingly share the characteristics of computers, they operate as both a platform and a gateway device to both voice and data networks. Consequently, these devices, frequently referred to as smartphones, are an essential tool to access the Internet for consumers. Many of these devices contain Internet web

browsers, and are therefore effectively users' doorway to the Internet – a public resource or commons. Consumers should be entitled to use any software program they choose to access the Internet. The choice in access means is equally important to an open web. Today, all consumers do not have a lawful means of exercising their choices, because some devices are tethered to particular software chosen by the hardware vendor. As a result, it limits the means by which users can access and use the Internet. When this happens, consumers' experience of the Internet – an open and public resource – is artificially constrained and unnecessarily defined by the hardware vendor because users are required to use that particular software in order to access and use the Internet.

Permitting this exception would increase the ways in which users can legitimately use their devices and encourage open access to the Internet - a public and shared resource. It would also permit users to upload certain legitimately available software to their telephone handsets, which would in turn encourage innovation, because the global Internet community would have an incentive to further develop both open source and proprietary software for their devices. Permitting this exception will encourage innovation in both corporations and open source communities that will benefit all Internet users.

3. Conclusion

For the reasons set forth above, the Librarian should determine that the non-infringing use described herein is, and is likely to be, adversely affected by the prohibitions of 17 U.S.C. §1201(a)(1), and therefore approve the proposed exemption for the period of 2009-2012.