

Comments on **37 CFR Part 201** - regarding:

3. Computer programs that enable lawfully acquired video game consoles to execute lawfully acquired software applications, where circumvention is undertaken for the purpose of enabling interoperability of such applications with computer programs on the gaming console. Proponent: The Electronic Frontier Foundation.

4. Computer programs that enable the installation and execution of lawfully obtained software on a personal computing device, where circumvention is performed by or at the request of the device's owner. Proponent: Software Freedom Foundation.

5. Computer programs that enable wireless telephone handsets ("smartphones") and tablets to execute lawfully obtained software applications, where circumvention is undertaken for the purpose of enabling interoperability of such applications with computer programs on the handset or tablet. Proponent: The Electronic Frontier Foundation.

Submitted by: Dale Sinder

**These comments apply to all of classes 3,4, and 5.**

I am a recently retired Sr. Research Programmer from the University of Illinois at Urbana-Champaign. My professional education was in Electrical Engineering with both a BS and MS degree. I have worked in both the private sector and the public sector during my career. Over my 33 years as a software engineer I have worked on computers that were so large that they were not contained in a single room. Over time, computers became both smaller and more powerful. By the mid 1980s I was using a small computer on my desk to both program it and to connect to much larger computers to program them. I had a computer at home which I could use to both program it and large computers at work. A trend to smaller and more powerful computers, interacting with each other, and enabling communications between both individuals and virtual communities was a continuous characteristic of the entire 33 year period. During this career I wrote educational programs, calculation programs, games, communications programs, database programs, web applications, and systems level programs.

The Osborne 1 portable computer was introduced in 1981.[\[1\]](#)

The Palm Pilot hand held computer was available in 1997.[\[2\]](#)

Tablet computers using a Microsoft operating system were announced in 2001.[\[3\]](#)

By 2003 the hand held IPAQ was in its second generation.[\[4\]](#)

In 2001 Microsoft announced its Windows CE Pocket PC OS would be offered as "Microsoft Windows Powered Smartphone 2002."[\[5\]](#)

In 2010 the 50th anniversary of the first computer-based education system, PLATO, was celebrated.[6] It was on this system that on-line multi-player games emerged.[7] It was also on this system that on-line community emerged.[8] I was fortunate enough to participate in some of this work.

**In the context of the long trend of smaller, more powerful, more portable, and more communications enabled computing devices, it makes little or no sense to distinguish one from another on the basis of size, computing power, manner of communications mechanisms, manner of man-machine interface, initial intended use or any combination of them. They are all computing devices which continue to evolve and improve at a fast pace and which may be capable of providing additional utility to the consumer beyond what may be offered by the manufacturer either "out of the box" or by manufacturer upgrade or augmentation.**

During my career, **on none of the above mentioned systems or devices was it not permissible for a programmer or "Author"[9] to write programs of their own design** that used the associated "hardware and operating system" in order to add functionality or utility for their own use and to, if desired, make the programs themselves, **but not the hardware or operating system**, available to others either freely or for a fee. **Indeed that was the whole purpose of the work** and career both in the private and public sectors. It was unimaginable a few short years ago that the case could be otherwise. It is un-understandable to me how it has now become otherwise.

In agriculture we have seen "genetically modified" crops patented and licensed in such a way that a farmer is prohibited from saving grain and replanting it as seed the next year. But we have **YET** to see the farmer prohibited from selling his crop for food, feed, or fuel production or from eating it himself. **Indeed that is the whole purpose of agriculture. But that is exactly the notion that is being now applied in some areas of the software ecosystem. Unimaginable, Un-understandable. It defeats the entire purpose**, except for those who might seek to illegitimately, under cover of law, secure for themselves a particular advantage over other segments of society or industry, or who might seek to secure some kind of censorship or control of expression or means of communication.

The term of "Jailbreaking" that has emerged should never have had reason to emerge in the first place.

**I urge you to reject the notion that it should be permissible for a manufacturer, under force of law, to inhibit a consumer, whether it be an individual, a company, or an educational institution, etc, from adding software written by himself or another party to any programmable device in order to gain added functionality that the consumer may deem desirable.**

**Let us continue to have a free and vibrant software ecosystem where innovation is encouraged rather than limited. Much of the work I have done over the 33 years of my career would have been seriously impeded, jeopardized, or not been possible at all given the restrictions that have recently been put into place.**

[1] <http://en.wikipedia.org/wiki/Laptop>

[2] <http://en.wikipedia.org/wiki/PalmPilot>

[3] [http://en.wikipedia.org/wiki/Microsoft\\_Tablet\\_PC](http://en.wikipedia.org/wiki/Microsoft_Tablet_PC)

[4] <http://en.wikipedia.org/wiki/IPAQ>

[5] <http://www.microsoft.com/presspass/features/2002/Jan02/01-08msces.msp>

[6] <http://www.youtube.com/watch?v=THoxsBw-UmM>

[7] [http://www.youtube.com/watch?v=dEyppAb\\_6ag](http://www.youtube.com/watch?v=dEyppAb_6ag)

[8] <http://thinkofit.com/plato/dwplato.htm>

[9] "Author" was the title given to programmers who wrote computer-based educational materials as well as games and communications programs on "PLATO".