

Thursday, January 26, 2012

Re: The Jailbreaking or “Rooting” Exceptions of the DMCA
Specifically regarding section 1201 of the Digital Millenium Copyright Act

For more information, view the website:

<https://www.eff.org/2012-DMCA-Exemption-Requests>

To Whom It May Concern:

Regarding the expiration of exemptions or protections regarding “jailbreaking” or “rooting” consumer-owned personal electronic devices, I would like to argue in support of making these exemptions **permanent**. Consumers, after having purchased a device from a service provider (in the case of a tablet or smartphone) or a vendor (in the case of computers and video game systems) should be free to do whatever they like with the device as long as those modifications do not adversely affect service provider networks (e.g. video game communities or wireless service networks).

In December of 2009, I bought a Motorola Droid smartphone (A855) from Verizon Wireless on a 2-year contract. I paid approximately \$200 for the device, and as much as \$80 per month after that for the service. The device was subsidized by Verizon using that monthly fee. I understand the full retail price of the phone may have been as high as \$500. After a period of about 12 months, I stopped receiving software updates to the phone. My \$500 device, one of the most advanced pieces of technology available to consumers today, was essentially “frozen” in place. It would not receive updates or upgrades from Motorola or Verizon, except those which were necessary to keep the device purely operational (e.g. security patches or baseband radio upgrades). In the meantime, the pace of the industry is such that phones are obsolete almost as soon as they leave the store.

Already after 12 months my phone had been left behind by a major software upgrade from Google (their so-called “Gingerbread” update to the Android software running on my Droid). In addition, several other upgrades including “Honeycomb” and “Ice Cream Sandwich” were later released. As a software developer and a tester (I am the director of technology at a school, and frequently need to “try out” the latest and greatest so I can share findings and new benefits with my colleagues and our students), my only option would have been to break my contract and purchase *another* device that would be capable of receiving the updates. There was no reason my phone could not run the software. The vendor (in this case both Motorola and Verizon) simply decided it did not make economic sense for them to provide upgrades. They had a vested financial interest in obsoleting my equipment before its time was up.

Luckily for me, under the exceptions for jailbreaking and rooting, I was able to root my device safely and easily using well-researched and published tools available for free on the Internet. A community of over a million of my peers was supporting free software based on Google’s open source Android operating system, and I was able to load another version of the free software upgrade onto my Droid phone. These upgrades allowed me to use my phone for the full two years of the original contract under which I purchased it. I, in turn, recommended similar Android-based phones to perhaps three-dozen colleagues.

In March of 2011, I purchased a Motorola Tablet, the Xoom, with the knowledge that I would

someday have to perform the same technique on it. After 12 months (coming up shortly, I assume) Motorola would stop releasing upgrades and the new \$650 tablet (for which I paid full retail price) would be obsolete. Because I can root the device and install the software I want on it, the device will continue to be usable well into the future.

In December 2012 I replaced my Motorola Droid with a new smartphone from Samsung, the Galaxy Nexus, precisely because it was advertised that Google would ensure this device continues to receive the latest upgrades for at least 18 months. I also bought the device because I knew with confidence that as a "Nexus" reference device, the community of free software developers would take interest in this particular phone, and that I will be able to receive updates even after Samsung and Verizon stops providing them.

I fail to see why, as long as my device does not interfere with Verizon's network or the global Internet, I should not be able to continue to upgrade and modify my purchased goods well after the manufacturer stops supporting them in an official capacity. A generation of computer scientists (myself included) came up learning to ply our trade by tweaking, breaking, and rebuilding computer systems and other electronics. I see no compelling reason that we should deny future generations this experience, and I selfishly claim it as my own, too. It seems obvious to me that allowing consumers to fully utilize their devices without any reasonable detriment to the vendors and services providers would be in the best interests of the consumers.

Thank you,

John Hardcastle
jwhardcastle@jwhardcastle.com
Owings Mills, MD