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From: William McClendon
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To: OS Copyright Office

R: Support for the the continuing exemptions for Jailbreaking of class 5 "Smartphones and tablets"

I would like to add my input to the pending process of renewing - or better yet, making permanent - the exemption allowing owners to jailbreak their class 4 "personal computing" devices.

I am a computer professional, having worked in the S/W and H/W industry for a total of 31 years so far. My personal and professional opinion is that any individual who has purchased such a class 5 device should be allowed to use it in any way they desire - provided they are not attempting to duplicate it for non-personal purposes. Let me explain my reasoning.

If i purchase copyrighted work - of any type - my non-commercial use of that copyrighted work is my business. I own that copy. Accessing it may be to read the book or magazine or read the source code/machine code to determine it's function. There is no difference in the two. Such access is in no way a violation of the copyright protecting the copying of that work. I have not copied it (beyond my right to copy it under current law) nor have I used it for commercial purposes, nor have I deprived the copyright holder of fees rightly theirs.

if I choose to take each page out of a book or copy the movie I purchased to another medium to safe guard it (backup copy) and then review and/or view each individual frame of said movie, I performed the same task. I have exercised my personal right to do with that copy as I wish - so long as that does not include commercial use or prohibited public performances.

Likewise, if I purchase a device that is a covered under a class 5 exemption, I should not prohibited in what I may lawfully execute (run) or store on that device. I have not leased that device, I have purchased it. If I purchase a car, I may elect to have it serviced by the dealer, a 3rd party, or myself. I am not prohibited from using the car for any purpose by the manufacturer. I am also not prohibited from painting it, taking out the intern, replacing the radio, or placing items intuit the truck.

I am also not prohibited from reprogramming the cars control unit (S/W) to different specifications - which my itself necessitates some amount of reverse engineering. Certainly, such actions may void or otherwise limit any warranties in such a class 5 exempted device. However, the loss or mitigation of a warranty is not a criteria for copyright. In short, there is no circumstance that I can see that would allow copyright to prevent me from the free use of a device I own - so long as I am not actually copying it for uses not provided under fair use.

Further, such a device can - and has been already shown to - include malicious and non-malicious code knowingly and unknowingly placed there by the manufacturer or their agents. Such code can and will both violate my privacy and may violate the law by providing 3rd parties with credit, financial, family, or medical information access to which they are strictly prohibited from having.

Recent events have been very informative in this area. If public statements are to be believed - the manufacturers of such devices themselves were surprised to learn of non-malicious but dangerous S/W on their devices that allowed for for more data collection that should have been allowed. Without review and analysis of the relative S/W - which REQUIRES a jailbreak - these findings would have remain hidden - even to the manufacturers.

In closing, let me say that not only should the current exemptions be renewed - they should actually be made permanent, so that such a review is not necessary at a later time. There is no alternative decision that both serves the public and honors current law allowing purchasers of copyright material free use of their material.

If this exemption is not renewed or made permanent, I will be contacting my Congress persons to make full S/W source code access at each release a requirement of leasing the Wireless spectrum that I (the public) owns and that the various cell carriers merely lease from us.

Sincerely,

William McClendon