

**Petition by Pymatuning Communications, LLC,  
To Ensure Continued Exemption For Cellphone Unlocking  
Under 17 U.S.C. § 1201(a)(1)**

Monday, 3 November 2014

Office of the General Counsel  
U.S. Copyright Office, Library of Congress  
James Madison Memorial Building  
Room LM-401  
101 Independence Ave., SE  
Washington, DC 20559-6000

**BY ELECTRONIC SUBMISSION**  
<http://www.copyright.gov/1201/petition-form>

Re: Notice of Inquiry, 79 Federal Register 55687, Docket No. 2014-07  
“Exemption to Prohibition on Circumvention of Copyright Protection  
Systems for Access Control Technologies”

Dear Sirs:

Pymatuning Communications, LLC respectfully submits this Petition, praying that the Librarian of Congress provide continued and expanded exemption from the DMCA’s prohibition on circumvention of access control technologies<sup>1</sup> after December 31, 2014, particularly for the class of copyrighted works described herein.

**Item 1. Submitter and Contact Information**

Pymatuning Communications, LLC (“Pymatuning”) is a Delaware limited liability company that helps others switch telecommunications service from one telecommunications carrier to another, as an agent acting directly and indirectly for and according to direction of owners of wireless telephone handsets and other wireless devices.

For purposes of this Petition, Pymatuning may be contacted by U.S. Copyright Office personnel through its representative, Will Quirk, at the following address:

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<sup>1</sup> 17 U.S.C. §1201(a)(1) (for reference, the “DMCA AntiCircumvention Provision”).

## **Item 2. Brief Overview of Proposed Exemption**

Closely tracking the exemption promulgated by Congress under the Unlocking Consumer Choice and Wireless Competition Act of 2014 (the “UCC&WC Act”), Pymatuning proposes exemption from the anti-circumvention provisions for the following class of works:

Computer programs, in the form of firmware or software, that enable used wireless telephone handsets *and other used wireless telecommunications devices* to connect to a wireless telecommunications network, when circumvention is initiated by the owner of the copy of the computer program solely in order to connect to a wireless telecommunications network and access to the network is authorized by the operator of the network (for reference, “Wireless Network Interoperability Programs”) [emphasis shown to highlight the only words differing from the exemption provided pursuant the UCC&WC Act].

Moreover, Pymatuning proposes that such exemption be adopted with a scope that ensures application of the exemption to others beyond the device’s owner, in a manner that tracks the express language of the UCC&WC Act, which provides, in pertinent part:

“Circumvention of a technological measure that restricts wireless telephone handsets or other wireless devices from connecting to a wireless telecommunications network ... may be *initiated by the owner of any such handset or other device, by another person at the direction of the owner, or by a provider of a commercial mobile radio service or a commercial mobile data service at the direction of such owner or other person*, solely in order to enable such owner or a family member of such owner to connect to a wireless telecommunications network, when such connection is authorized by the operator of such network.” [emphasis added to highlight the requested scope beyond the device’s owner].

Even though the UCC&WC Act made clear just in the last few months prior to this Petition that Congress intends Wireless Network Interoperability Programs to be exempt from the DMCA Anti-Circumvention Provisions, the enforceable duration of exemptions pursuant the UCC&WC may be subject to debate. Hence, Pymatuning enters this Petition to help make certain that Congress’s intent is followed in the Librarian’s current triennial review, despite any uncertainty.

Further, while the justifications underlying the UCC&WC Act also apply to all portable computers, tablets and other types of devices that communicate via wireless telecommunications networks, and that are often locked much the same as wireless telephone handsets, Pymatuning requests that the scope of “handsets” be clarified to include all such wireless telecommunications devices.

### **Item 3. Copyrighted Works Sought to be Accessed**

This proposed exemption is requested for enabling access to works within the statutory class of literary works. More particularly, the class sought to be accessed are Wireless Network Interoperability Programs in the form of firmware or software that is stored within the wireless telecommunications device. To be clear, Wireless Network Interoperability Programs are meant to include not only the executable computer programs for controlling operation of the device on a carrier's network, but also the data files used by such programs. For wireless telephone handsets and other wireless telecommunication devices, such files include the Preferred Roaming List (PRL) files that identify authorized towers within the network, as well as the Package Resource Index (PRI) files that determine operating parameters for the device.

### **Item 4. Technological Protection Measures**

Despite predictions otherwise during the last preceding triennial review, various wireless telecommunications carriers continue to utilize computer programs that effectively lock the wireless device to a particular network (for reference, "Telecom Locks"). Such Telecom Locks practically restrict the purchaser of a locked device from freely switching from one wireless telecommunications network to another. In doing so, Telecom Locks not only restrict an owner's use and enjoyment of his or her wireless device, but they can also be used by carriers to effectively exert unfair advantage over such an owner, restricting the owner from switching networks without the carrier's express permission, which may or may not be practical for a typical end user. Such Telecom Locks can also lead to potential waste – economic waste when a locked device won't work on another network and has to be replaced with a new device, and environmental waste if the end user consequently discards the locked device (and its potentially-hazardous electronic components) in a landfill.

In today's wireless telecommunications market, end users commonly purchase wireless devices from a carrier that operates or has access to a particular wireless telecommunications network, or from an affiliate or licensee of such a carrier. Later, if the end users want to discontinue service with their initial carrier in order to switch to another carrier that they believe will offer more favorable terms for one reason or another – whether for price or for quality of service, or for a variety of other legitimate reasons – the end users are restricted from doing so unless they can circumvent or obtain permission to disable any Telecom Locks that are used by their first carrier.

Unfortunately, Telecom Locks are still commonly used by various carriers to restrict the end users and their subsequent carrier from accessing the Wireless Network Interoperability Programs within the device in order to reprogram it for use on the subsequent carrier's network. Carrier Locks that are frequently utilized by wireless carriers include, but are not limited to: (1) Service Provider Code (SPC) locking, (2) System Operator Code (SOC) locking, (3) Band Order Locking, (4) Subscriber Information Module (SIM) card locking, and (5) others that may be used for such purposes. Without continuation of the presently proposed exemption, consumers would have limited options when attempting to switch wireless carriers, particularly if they want to continue use of a locked wireless device on a subsequent carrier's network.

If an end user wishes to legally switch service to another carrier, the requested exemption would permit circumvention of such Telecom Locks to allow the consumer to use his or her wireless

device on another carrier's wireless telecommunications network. The requested exemption therefore works to ensure that owners of wireless telecommunications devices, and others acting on their behalf, are able to continue using the devices that they own, even if they choose to legally switch their telecommunications service from one carrier to another. Hence, the requested exemption would neutralize the anticompetitive effects and reduce the economic and environmental burdens that can result from locked telecommunications devices.

#### **Item 5. Noninfringing Uses**

At the outset, it is noted that the Librarian of Congress has properly acknowledged in prior exemption determinations that the "owner of [a] wireless telephone handset . . . is also the owner of the copy of the computer program in such wireless telephone handset." The same can also be said of tablets and other computing devices that are made to communicate via wireless telecommunications networks. Hence, given the nature of ownership of such a device and the software copies that control its use, enabling interoperability of that device on other telecommunications networks is non-infringing absent any enforceable contractual agreement otherwise.

Moreover, even if any necessary reprogramming rises to the level of creating an adaptation of copyrighted device programming, Section 117 of the Copyright Act provides that such adaptation does not infringe the associated copyrights. Particularly, Section 117(a)(1) expressly provides that "it is not an infringement for the owner of a copy of a computer program" to adapt it so long as the adaptation is created "as an essential step in the utilization of the computer program in conjunction with a machine." The owner of equipment that contains a copy of a program, hence, has what has been called the "right of adaptation," which includes the right to add features to the program that were not present at the time of acquisition, to suit the owner's needs. For Wireless Network Interoperability Programs, this means that the device owner clearly has the noninfringing right to reprogram the device in order to switch carriers and modify the operating parameters of the device. Hence, even if were unsettled with regard to whether the owner of a wireless device is considered an owner of the software copy used to run the device, or whether that owner were merely a licensee of such software, processes used to "unlock" a wireless device to allow a consumer to switch service to a new carrier do not require any action which would infringe on copyright rights in the device software.

Hence, but for the DMCA AntiCircumvention Provision, wireless device owners who wish to switch service providers and modify the operating parameters of the wireless device would not infringe the copyright rights in the device or its software copy.

#### **Item 6. Adverse Effects**

Without the exemption proposed herein, end users who own wireless device that are locked to particular wireless communications networks are left with limited options if they wish to switch service to different wireless carriers: (1) abandon their non-infringing rights in their original device and spend additional money required to purchase a new device from the new carrier; (2) persist with their initial carrier to see if and how that carrier might work with them to switch networks on that carrier's terms; or (3) abandon their desire to switch carriers and reinstate or continue service with the former carrier. Without the proposed exemption, the

DMCA Anticircumvention Provisions would have a critical impact on the wireless communication network market, our environment, and consumers.

In light of the foregoing, we sincerely ask the Librarian to ensure that the exemption for Wireless Network Interoperability Programs be continued beyond 2014, as proposed and as is in keeping with the Congressional intent reflected in the UCC&WC Act.

Respectfully Submitted,  
Pymatuning Communications, LLC

By: /William H. Quirk/  
Will Quirk, its authorized representative