



United States Copyright Office

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September 18, 2006

Morton David Goldberg, Esq.  
Cowan, Liebowitz & Latman, P.C.  
1133 Avenue of the Americas  
New York, NY 10036-6799

Re: Copyright Office Docket No. RM 2005-11

Dear Mr. Goldberg:

The Copyright Office has received your letter of September 11, 2006 enclosing "Information Submitted on Behalf of CTIA – The Wireless Association, Complementing Response to Copyright Office Request of August 14, 2006 for Further Information."

As we assume you know, the deadline for initial comments in the above-referenced rulemaking proceeding was December 1, 2005. At that time, the Wireless Alliance submitted its comment requesting an exemption covering "computer programs that operate wireless telecommunications handsets. (Mobile firmware)." Comments expressing opposition to (or support for) that proposed exemption were due no later than February 2, 2006.

Persons wishing to express opposition to proposals for exemptions also had the opportunity to participate in hearings that took place last Spring. The hearing relating to the proposed exemption that is the subject of your submission took place on March 23, 2006. Following the hearings, if we determine that we require additional information or clarification on matters addressed by the witnesses who participated in the hearings, it has been our practice to submit additional questions to those witnesses seeking that information or clarification. However, those questions are not invitations for public comment. Once the hearings have concluded, the rulemaking proceeding is at an advanced stage and, apart from the information we elicit from the witnesses following the hearings, our rulemaking record is closed.

Our procedures do anticipate the possibility that someone may be able to justify submitting a comment to the Office after the deadlines for comments have passed. The final paragraph of our October 3, 2005 Federal Register notice initiating this proceeding stated:

To provide sufficient flexibility in this proceeding, in the event that unforeseen developments occur that would significantly affect the Register's recommendation, an opportunity to petition the Register for consideration of new information will be made available after the deadlines specified. A petition, including proposed new classes of works to be exempted, must be in writing and must set forth the reasons why the information could not have been made available earlier and why it should be considered by the Register after the deadline. A petition must also be accompanied by fifteen copies of any new proposed exemption that includes the proposed class of works to be exempted, a summary of the argument, the factual basis for such an exemption and the legal argument supporting such an exemption. These materials must be delivered to the Copyright Office at the address listed above. The Register will make a determination whether to accept such a petition based on the stage of the rulemaking process at which the request is made and the merits of the petition. If a petition is accepted, the Register will announce deadlines for comments in response to the petition.

Notice of Inquiry, Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 70 Fed. Reg. 57526, 57531 (October 3, 2005).

Your September 11 letter and accompanying submission do not appear to have complied in form or substance, with the foregoing requirements.

If you wish to have us consider your September 11 letter and accompanying submission, we must receive, no later than 5:00 p.m. this Friday, September 22, the petition described in our Notice of Inquiry. Because you are not seeking an additional exemption, there obviously is no need to address "proposed new classes of works to be exempted." However, your petition must "set forth the reasons why the information could not have been made available earlier and why it should be considered by the Register after the deadline."

In addressing those reasons, we ask that you include the following information:

1. When did CTIA - The Wireless Association first become aware of:
  - A. The current rulemaking proceeding; and
  - B. The fact that the exemption upon which you now seek to comment was being sought?

2. Did any members of CTIA - The Wireless Association become aware of –
  - A. The current rulemaking proceeding; or
  - B. The fact that the exemption upon which you now seek to comment was being sought,  
– prior to the time identified in response to question 1?
  
3. If the answer to question number 2 is “yes,” please:
  - A. Identify the member or members of CTIA - The Wireless Association in question;
  - B. State what information the member or members became aware of and when the member or members became aware of that information.

In addressing why your comments should be considered by the Register after the deadline, please explain the reasons for any delay from the time CTIA - The Wireless Association or any of its members first became aware of this rulemaking proceeding and the requested exemption, and address why those comments should be considered notwithstanding any such delay.

Sincerely,



David O. Carson  
General Counsel

cc: Jennifer Granick, Esq.  
Steven J. Metalitz, Esq.  
Lance D. Reich, Esq.