

Before the
U.S. COPYRIGHT OFFICE
LIBRARY OF CONGRESS

In the Matter of
EXEMPTION TO THE PROHIBITION OF CIRCUMVENTION OF
COPYRIGHT PROTECTION SYSTEMS FOR ACCESS CONTROL
TECHNOLOGIES

Docket No. RM 2008-08

Reply Comment of Greg Fisher
In Support of Exemption Request 5 B-D

I am writing to express my concern over the potential use of the DMCA to limit consumers from unlocking their cellular equipment. I have been selling used cellular handsets over the Internet since June of 2002. At its peak, my business sales volume on eBay hit \$25000 per month, and we moved approximately 1200 handsets a month. This is 1200 new handsets a month that the big providers can't sell to value-conscious consumers.

I am extremely familiar with the ways that the major providers prevent customers from activating the used phones I sell, even when that phone is locked to the provider's network. The major providers set up sometimes insurmountable hurdles to prevent customers from activating used phones on their networks. The customer who wants good value out of his used phone must then unlock the phone so that another compatible provider can activate it on their network. This is the only way to protect the customer, get value out of used phones, and encourage the major providers to provide better service to customers opting to reuse handsets.

There is no technological reason that handsets can not be used on compatible networks, and many networks are compatible. Metro PCS leases it's air time from Sprint. So, there is no reason I should not be able to take my Sprint handset with me to Metro PCS. Until Verizon bought Alltel, they used compatible phones and there was no reason that Verizon customers should not be able to take the handsets that they own with them to Alltel.

However, providers have a huge financial incentive to force customers to unnecessarily buy new phones. The major cellular providers get incentives from the manufacturers to sell new handsets in the form of volume-based discounts. So, if consumers have to buy a new phone when they change providers the companies sell more phones.

There are many ways that the companies make it extremely difficult or

impossible for customers to activate used phones. For example, Sprint routinely leaves old phones attached to the account that they have been removed from to create confusion for buyers of these used phones. The used phone buyer calls to activate a phone and is told it is still active on an account. If the customer knows to ask the underpaid and overworked rep to "check the equipment page on the account", most of the time the phones have, in fact, been removed from the former accounts. But most customers don't know to ask and most reps don't take the initiative. It is possible to call Sprint or Verizon four times about a single phone and get four different answers. As a result, customers are prevented from activating perfectly good used phones.

The "authorized dealers" are the worst. They only make money if they can find a problem with a used phone and sell the consumer a new one. Otherwise, they have to activate a used phone for free, although some charge as much as \$30 for the service.

The major providers create many false reasons for permanently deactivating a phone from their network. If the customer owes money and his service gets cancelled, the provider "marks the phone out" and it can NEVER be used again. Both Sprint and Verizon have multiple data bases that a clerk must check to determine if a phone can be activated. The reps are judged based on the volume of calls that they answer each night. If the clerk types the ESN in wrong or forgets to check which equipment is actually still active on the account then my customer is told that the phone can NEVER be used again. If a perfectly working phone had a past due bill, it can NEVER be used again and must be recycled or broken up for parts.

Sometimes the providers misrepresent that a used phone is stolen to discredit the used phone market and force customers to unnecessarily buy a new phone. If the phone was reported lost and placed in a charity drop bin, it can NEVER be used again. This is because the major providers have lists of phones that have been verbally reported as "lost or stolen". If a used phone is on this list, the consumer is told that the phone is STOLEN and cannot be activated. So providers refuse to activate phones that were lost. Most of my phones come from wholesalers that buy phones donated to charities. I have sold phones for my child's school and for our Church. The false assertion that these phones were stolen and the refusal to activate means that charities cannot get money for this legitimately re-sold equipment.

For these reasons, I write to support granting exemptions 5B-5D.

Best Regards
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