

## **In the Matter of Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies**

*Submitted by:*

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*Class of works:*

(3) game consoles, (4) exemption request to allow jailbreaking of personal computing devices, and (5) smartphones and tablets.

***Argument:***

The DMCA overreaches in its intended purpose and gives copyright holders too much power. The “jailbreaking” of any computing device [which may require circumvention of technological barriers] is not an inherently illegal activity. Historically, modifying a device from its original design has not been illegal. However, the DMCA anti-circumvention measures makes such modification potentially illegal.

Here is an example in the physical world that is analogous to the digital world. Let us say that you purchase a car. Normally, once you have purchased the car you own it and can do to it what you please. For example, you could remove the engine and replace it with a different one, or make any other number of modifications. Now let us say that car manufacturers do not want you touching the engine, so they use special bolts to secure the motor to the vehicle. This is equivalent to a “technological barrier” from the digital world. If the DMCA anti-circumvention law applied to the physical world, then it would be ILLEGAL for you to circumvent this barrier by reverse engineering a tool that could remove the bolts so that you could change the engine to your pleasing.

This example may seem contrived, but that is exactly what is happening right now in the digital world. It should NOT be illegal to modify a personal computing device as the owner sees fit. As the owner of the device, it is the right of the owners to do with as they see fit. This may require overcoming technological barriers put in place by the creator to do so. Nonetheless, ownership has transferred away from the creator.

In sum, I support the Software Freedom Law Center’s (SFLC) request to allow jailbreaking of all personal computing devices. This includes class of works (3) game consoles, (5) smartphones and tablets, and (4) all personal computing devices. The Web site of the U.S. Copyright Office says “The Office's mission is: ‘to promote creativity by administering and sustaining an effective national copyright system.’” I argue that allowing jailbreaking to become illegal [again] would in fact stifle creativity which is contrary to the office’s mission. There is no viable alternative to circumvention which the SFLC explain in their comment.

