Short Comment Regarding a Proposed Exemption

Under 17 U.S.C. 1201

Item 1.Commenter Information

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Item 2.   Proposed Class Addressed

Proposed Class 17: Jailbreaking—All-Purpose Mobile Computing Devices

Item 3.Statement Regarding Proposed Exemption

As an independent software developer, I support the ability to keep smartphones and other mobile devices legal to "jailbreak". First of all, let it be known that I do not support theft of software or digital piracy. As the developer of software, including smartphone apps, myself, I am a victim of digital piracy. Having said that, it's crucial to understand that jailbreaking does not equate to piracy. Jailbreaking simply turns a smartphone, or mobile device, into a computing device with comparable restrictions to what every computer user is accustomed to on their desktop or laptop. The ease with which smartphone vendors like Google, Apple, etc. can develop their products is largely due to the fact that they are using scaled-down "computer" platforms to implement their phone or tablet designs. If these are computers, why should it be illegal to treat them as such?

Vendors like Apple have burdened their devices with excessive limitations on usage that no consumer would accept on a laptop or desktop computer, including Apple's OS X. Yet, increasingly, smartphones cost as much as low-to-mid-range computers. On my computer, I may install software from any source I choose. It's unclear to me how the US government even allows a smartphone vendor to lock-down a device so that only that company's "App Store" may be used to purchase software. Without jailbreaking, iOS users are forced to Apple's App Store for software, where Apple takes a 30% share of all sales.

As a developer, part of my job is also testing my software in ways that end-users never do. I need to run diagnostic tools on my software to ensure that it's working properly, efficiently, and without security vulnerabilities. As iOS, for example, is built upon a BSD-style UNIX operating system developed far before the iPhone, there exists a wealth of tools and techniques available to me to test and debug my software. Unfortunately, the restrictions Apple puts on the iPhone, out-of-the-box, prevents me from using these tools. This doesn't make the software I build for their users better. It makes it worse.

Finally, consumers need to be able to perform their own audits of the mobile device vendors' products. As we saw in recent years, iOS location tracking was saving user location data in such a way as to make many users uncomfortable. The detection of that issue would have been nearly impossible without having jailbroken devices.

From a consumer protection standpoint, a software quality standpoint, a fairness standpoint, and an antimonopolistic business practice standpoint, jailbreaking must remain legal.

Thank you for your consideration.

Nathan Scandella