

*Note: Please submit a separate comment for each proposed class.*

*This is a Word document that allows users to type into the spaces below. The comment should be no more than one page in length (which may be single-spaced but should be in at least 12-point type). The italicized instructions on this template may be deleted.*

## **Short Comment Regarding a Proposed Exemption Under 17 U.S.C. 1201**

### **Item 1. Commenter Information**

*Identify the commenting party and, if desired, provide a means for others to contact the commenter or an authorized representative of the commenter by email and/or telephone. (Please keep in mind that any private, confidential, or personally identifiable information in this document will be accessible to the public.)*

Evan Abitbol, Student, Fordham University School of Law

### **Item 2. Proposed Class Addressed**

*Identify the proposed exemption that the comment addresses by the number and name of the class set forth in the Notice of Proposed Rulemaking (e.g., “Proposed Class 7: Audiovisual works – derivative uses – noncommercial remix videos”).*

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

### **Item 3. Statement Regarding Proposed Exemption**

*Explain why you support or oppose the relevant proposed exemption.*

The DMCA restriction on “jailbreaking” mobile computing devices inherently fails on multiple grounds and is by nature antithetical to the purpose and function of copyright in the United States. First, the bar for DMCA compliant TPMs is set far too low in its requirement for protecting copyright interests. As it currently stands, TPMs restrict a range of activities that are far beyond the scope of their protection of copyrighted content. As a result of this, consumers wishing to utilize the complete functionality of their devices are potentially subject to incredible amounts of liability. Secondary benefits to both consumer and manufacturer are not legally justifiable reasons to allow overly restrictive systems that operate beyond the bounds of their initial copyright protection purpose to benefit from the copyright focused protection enabled by the DMCA.

Prior exemptions for this category were only delayed because the Register could not devise a proper definition for the word “tablet.”

Opponents of Exemption claim that the availability of alternative means to the same ends justifies allowing the current TPM regime to continue. This is red herring, as evidenced by the lack of proposals for an exemption on laptop and personal computer TPMs. In those cases, a vast number of legitimate alternatives to circumvention exist, and as a result, such exemptions would not be justified. Mobile computing devices, however, do not have that level of variety and freedom of choice. The application systems inherent to such devices is often restricted to specific vendors or compliant download platforms. These systems unnecessarily and unfairly limit the capacities of consumers to utilize their devices under the guise of copyright protection. As such, the Register should create an exemption for the jailbreaking of mobile computing devices.

PRIVACY ACT ADVISORY STATEMENT Required by the Privacy Act of 1974 (P.L. 93-579)

The authority for requesting this information is 17 U.S.C. §§ 1201(a)(1) and 705. Furnishing the requested information is voluntary. The principal use of the requested information is publication on the Copyright Office website and use by Copyright Office staff for purposes of the rulemaking proceeding conducted under 17 U.S.C. § 1201(a)(1). NOTE: No other advisory statement will be given in connection with this submission. Please keep this statement and refer to it if we communicate with you regarding this submission.