



**UNITED STATES DEPARTMENT OF COMMERCE**  
**The Assistant Secretary for Communications**  
**and Information**  
Washington, D.C. 20230

April 16, 2010

Ms. Marybeth Peters  
Register of Copyrights  
Library of Congress  
James Madison Memorial Building  
Washington, DC 20540-3120

Dear Ms. Peters:

On November 4, 2009, I transmitted a letter to you expressing the National Telecommunications and Information Administration's (NTIA) view on the proposed exemptions pursuant to Section 1201(a)(1) to the Digital Millennium Copyright Act (DMCA). Subsequently, your office asked for additional clarification regarding NTIA's position related to the proposed cell phone unlocking exemption.<sup>1</sup> In particular, your office asked whether NTIA would support designating a class that would permit not only consumers, but also recyclers and not-for-profit entities that obtain used cell phones, to be included within the scope of the exemption, including not-for-profit entities that provide cell phones for U.S. military personnel. As a part of this process, your office provided draft exemption language and a sample of the explanatory notes that would accompany the exemption.

In its initial letter, NTIA specifically supported the current exemption for use by consumers in order to switch networks once they have fulfilled their contractual obligations. NTIA also emphasized that it believes that the triennial DMCA exemption rulemaking is an inappropriate forum to debate the larger policy issues related to communications and competition. At the same time, NTIA recognizes the broad desirability of making it easier for not-for-profit entities to provide used cell phones to aid workers and the U.S. military and for certain green uses such as recycling. To the extent the Copyright Office intends to adopt this exemption, NTIA would like to provide the following recommendations.

NTIA recommends that the Copyright Office provide more detailed explanatory notes that emphasize the intended scope of this class to include the non-infringing uses of the exemption, but specifically exclude the bulk resellers or other similar commercial uses. As NTIA stated in its initial letter, NTIA does not support the use of this exemption for commercial purposes, such as bulk resellers. The Copyright Office's use of the term "used," as distinct from "new" products, in the proposed exemption would help to clarify its position and prevent abuses pointed out by opponents, such as the bulk purchase of unused handsets with the purpose of unlocking the phones for use on another network.

NTIA is also concerned about the possible introduction of unintended ambiguity into the language of the proposed exemption with the phrase "by the owner of the copy of the computer program." As recognized in the proposed explanatory notes, the meaning of this phrase is uncertain in the law. With this language, NTIA believes that consumers could misunderstand

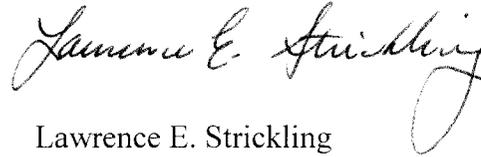
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<sup>1</sup> Proposed *Class 5(B-D)* (Cell Phone Unlocking).

what rights the possessor of the used handset would have under the exemption. Therefore, NTIA recommends deleting this language from the text of the proposed exemption.

Thank you for this opportunity to clarify NTIA's earlier comments on this proposed exemption and to provide its views on the proposed text of the exemption.

Sincerely,

A handwritten signature in black ink that reads "Lawrence E. Strickling". The signature is written in a cursive style with a large, looping 'L' and 'S'.

Lawrence E. Strickling