

Comment number class 4

Miles Nordin  
114 Forrest St Apt 3A  
Brooklyn, NY 11206

Library of Congress  
Copyright Office

To whom it may concern:

I write in support of the Software Freedom Law Center's request to exempt owners of personal devices circumventing locks to install any lawfully-obtained software of the device owner's choice from the DMCA anti-circumvention provisions.

Without this exemption, consumer electronics are being transformed into golems in citizens' pockets acting on behalf of a network of shady and non-transparent interests rather than the devices' owner's interests. It's becoming harder to live an empowered life without accepting a chorus of these little infiltrators into ones' personal space. Pressuring consumers to opt out of a segment of the market to preserve their safety and dignity should never be our goal, but slowly that's becoming a choice that's too costly to make, like in M. T. Anderson's science fiction book *\_Feed\_*. We need to ensure people who accept devices into their private personal spaces retain control of those devices.

Three kinds of companies are involved in these devices that I can see:

- \* Platform developers like Apple, Microsoft, Google, Nintendo, Sony
- \* Device manufacturers like Apple, Nintendo, Sony, Nokia, Samsung
- \* Wireless carriers: Sprint, VZW, T-Mobile, and AT&T.

No matter what device you end up with, one company from each of these three lists will have some influence in the platform you experience because they cooperate with each other. The influence is sometimes subtle and unexpected. For example, if you get an iPod, the wifi-only version of an iPhone, AT&T will still have some influence in the device because the two devices share a software build that evolved subject to AT&T's haggling.

The ecosystem that's evolved around these devices uses the anti-circumvention provisions to transform the nominal owner of these devices into game chips that can be bargained and sold in games of brinksmanship among these players. Spyware force-installed on these devices monitors the user's behaviour: what computer programs does he

or she run, and what television programs, radio programs, and books does he or she view? Game consoles are fixed, so they only report where the user lives, but phones and tablets track the user's movements with GPS. There's a lot to be sold, but the most egregious invasions are perhaps not even the most interesting or the most profitable. There's a fourth party at the table:

\* The app developer

The core point is that the ecosystem relies on controlling user experience. The "app developers" that I meet in cafes focus on the last two words, "user experience," meaning that if we put conscious effort into something we can make it good, but I want to focus on the first word, control. Everyone in this game has come to the table trying to win some control over the users attached to the fleet of devices out there.

It's become the rule, rather than the exception, that software from "app stores" taunts the user, like a television game show or the degrading rules of a concentration camp. It's meant to be subtle and fun taunting, but the levers of power involved are anything but. For a particularly subtle example, Foursquare might offer you the carrot of a coupon if you complete an obstacle course and "check in" to a series of landmarks in order. In the absence of malice on one side or an inclination to rebel on the other, this might seem like jolly good fun, but it's an unprecedented level of power we've granted these players over the owners of the devices. It is the same level of power the government has when it releases a prisoner under house arrest with a GPS tracking anklet. This is the dark side of Foursquare's business: the argument that brings people to the table, regardless of how consciously they realize it, is the promise that coupon carrots will be delivered accurately to obedient users. This is possible because there's a chain of control over the user's device through all the inter-business deals, a chain that excludes the user.

The modification that transforms a phone or tablet from a toy into a tracking anklet is the anti-circumvention provision: platform and device manufacturers create phones and tablets that ensure authenticity of the GPS fixes they deliver to app developers. The phone's owner isn't a party to this promise. The app developer receives a promise they will either get accurate GPS fixes of a single real human, or they'll get a "user refused GPS tracking" signal. This is just what the anklet does: it either gives the prisoners accurate location, or it signals "prisoner destroyed/removed anklet." The tamperproof clasp on the prisoner anklet is the anti-circumvention provision.

Without it, I could use third-party ROMs, available now but of low quality for phones and tablets, that alter them to give bogus location data to Foursquare. This would be good. This is the only correct balance of power.

Video game consoles operate in a similar ecosystem because, when you buy a console, you don't really own it. To do anything meaningful in

the game console ecosystem you must buy a subscription to XBox Live or battle.net or some other online service. These services link you with other players, distribute necessary software updates, sometimes unlock games (which cannot be fully played, even by yourself, unless you enable the service to track the games' use), and also control consoles. The price you pay for a game console isn't the cost of a hardware, but a bond on your obedience to arbitrary "policies" the console manufacturer and their partners set. The console's price is adjusted to whatever seems like an appropriate bond---the actual cost of hardware is irrelevant, because they can get that from the monthly subscriptions or from kickbacks that each game title gives them, because they control the whole ecosystem. The point of the console price is, if you misbehave, they'll brick your console by kicking its serial number off of their Battle Net.

When I buy a device and bring it into my living room, I own it. The game console sitting on my shelf is not a third-world taxi medallion that exists to dissuade me from kidnapping tourists, a pile of money a contractor leaves with a third party to promise he'll finish a job, or a fee payed by a prisoner to ensure he'll appear at court. It's my device. It's not only non-transparent what they're doing---parents think they're actually buying something for their kids, not bonding their kids' "good" behavior (as judged by the console manufacturer). And it's also disgusting, in that it teaches a subservient attitude to our children, and it is "chilling" in that, you don't know what the rules are, but you know you're at the console manufacturer's mercy up to your bond price, so you don't want to do anything that offends their "interests".

That's what the DMCA has done. It's incredible these companies have been so ingenious that they're able to transform what was meant to be a copyright-related shackle into a way of bonding children to arbitrary and capricious policies. It's obviously not the law's intent, and it needs to stop, regardless of whether the ecosystem that's grown up around this bondage is entirely bad or just partly bad.

Thanks for your attention.

Sincerely,

Miles Nordin