

Comment for the Exemption to Prohibition on Circumvention of
Copyright Protection Systems for Access Control Technologies

Name: Dr. Tyler Bletsch

Class of work: Smartphones & tablets (5)

"Jailbreaking" is the process of establishing complete privileges over a consumer device, as opposed to the restricted subset of privileges enabled by the manufacturer. This process, in and of itself, has no copyright implications. No "copy" need even take place to perform this act alone.

What it can do, however, is open up a broader range of capabilities to the user, and among these, an enhanced ability to transfer and copy data. However, this is merely a mechanism – the legality of these operations is no different than allowing consumers the use of Xerox machines, tape recorders, and general purpose computers. *The tool is not a crime.*

It is absurd to consider the lawful use of a device I own as illegal simply because it may allow subsequent illegal behavior. I can legally buy a crowbar without burglarizing a house; I can legally buy a CD-R without copying music; why should I be unable to legally jailbreak my phone without copying protected software or media?

I have personally jailbroken my HTC Droid Eris smartphone in order to obliterate the vendor software and install an environment governed by open licenses. I did so because the vendor in question had abandoned the phone, leaving it without feature updates, bug fixes, and (most importantly) security patches for known vulnerabilities. Without this capability, I would have been at risk of software instability and data theft. I have also jailbroken my Android tablet as well to add features and functionality omitted by the vendor.

In doing these things, I did not copy a single byte of copyrighted data except as covered by open licenses. I merely used the hardware I purchased outright to run software I was legally entitled to. In what sane copyright regime could such an act be illegal?