

Petition for Proposed Exemption Under 17 U.S.C. § 1201

*Note: This is a Word document that allows users to type into the spaces below.
Please submit a separate petition for each proposed exemption*

Item 1. Submitter and Contact Information

Mr. Maneesh Pangasa

Item 2. Brief Overview of Proposed Exemption

I would like to request an exemption to the Digital Millennium Copyright Act for jail-breaking or rooting tablets like the Apple iPad Air & iPad Mini, Amazon's Kindle Fire HD, Microsoft Surface line of tablets (particularly the RT version to install hacks that permit running desktop applications on RT devices). During the last comment period for DMCA exemptions there was a petition to renew a DMCA exemption for smartphones that had been previously approved so users can legally jail-break their iOS phones or root their Android phones and extend those critical protections to tablets. Tragically the Copyright Office passed on that petition declining to even extend the protections for jail-breaking phones causing that exemption to expire.

However, with enough pressure put on Congress and the White House the Unlocking Consumer Choice and Wireless Competition Act was passed into law and signed by President Obama. The new law repeals a Library of Congress (LOC) rulemaking determination made upon the recommendation of the Registrar of Copyrights, regarding the circumvention of technological measures controlling access to copyrighted software on wireless telephone handsets (mobile telephones) for the purpose of connecting to different wireless communications networks.

The law reestablishes as an exemption to provisions of the Digital Millennium Copyright Act (DMCA) prohibiting such circumvention, a previous LOC rule permitting the use of computer programs in the form of firmware or software, that enable used wireless telephone handsets to connect to any wireless telecommunications network, when circumvention is initiated by the owner of the copy of such a computer program solely to connect to such a network and access to the network is authorized by the network operator, thus permitting unlocked phones. The law directs the Librarian of Congress, upon recommendation of the Registrar, to determine

whether to extend such exemptions to include any other category of wireless devices in addition to wireless telephone handsets (e.g., tablets and other mobile broadband enabled 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 pursuant to 17 U.S.C. § 1201(a)(1). NOTE: No other advisory statement will be given in connection with this application. Please keep this statement and refer to it if we communicate with you regarding this petition.

Item 3. Copyrighted Works Sought to be Accessed

I therefore request an exemption to the Digital Millennium Copyright Act be granted extending the protections for (class #5) mobile phones to include tablets and dedicated e-readers like the Amazon Kindle. Furthermore, if the Copyright Office agrees it can even be extended to cover most wireless devices if not all. My petition though is just for this subset of tablets like the Apple iPad Air, iPad Mini, Amazon's Kindle Fire HD, e-readers like the Kindle Paperwhite etc and Microsoft's Surface line of tablets etc. Interoperability and wholesale open access paved the way for the fax machine and the Internet of today. You can use any PC and OS with any ISP. Sir Tim Berners Lee got online by connecting a phone line to his PC. If he needed the phone company's permission it would have stalled innovation. Competition and innovation are good a locked down status quo bad.

Item 4. Technological Protection Measure

Each of the companies named in this petition use draconian digital restrictions management technology (they call it digital rights management) to control the user experience and lock-in users of their platforms to the point it becomes difficult if not impossible to switch. Each of these companies is Defective by Design because they get to control how our devices work. Digital media stores using DRM primarily act as cloud lockers for digital media purchases and are only selling the user a license to access content which can be revoked at any time. Furthermore, they can change the terms of sale after the sale has occurred and require users to agree to updated end user licensing agreements that revoke user's freedoms.

In that regard digital media is only ever rented to the user. Take the Amazon Kindle or Swindle as an example of draconian DRM and fair use violations. As a Kindle user your basic rights (with print books) to share, sell or a donate a book are subject to fights with Amazon over the legal and technological restrictions they oppose. If you try to exercise these rights anyway you might be violating the Digital Millennium Copyright Act (DMCA) which could bring severe criminal penalties – and Amazon can try to revoke your ability to use all of the books you bought.

Apple Inc., is Defective by Design: All Apple products impose Digital Restrictions Management (DRM) that takes control of your music, movies, TV shows and games away from users. Even though it is (now) possible to download DRM free music through iTunes, it's streaming music, rental movies and TV shows (including purchased movies & TV) have DRM. Apple even uses DRM to prevent Macs from playing video on "unauthorized displays".

When Palm Inc., tried to make their Pre smartphone work with the popular iTunes software Apple Inc., released an update breaking compatibility with the Palm Pre. Apple chose they would rather make their own software less useful to enforce lock-in to Apple's mobile devices. Users can only install approved software found in Apple's App Store unless they jailbreak their iOS devices so Apple has control of our iOS devices and by extension controls how we use them. Open access and interoperability while good for the end user is bad clearly for these companies bottom line.

Item 5. Non-infringing Uses.

Specific non-infringing uses can include the ability to run third party applications or software of the end-user's choice on their tablets and dedicated e-readers which might not be available in the iOS App Store or Amazon's App Store due to them allowing functionality to the end-user violating Apple or Amazon's terms and conditions for distribution in their application stores. Keep in mind Apple Inc., compared to Google has more severe restrictions on what apps can be allowed into its store and what apps can and cannot do. Android users have had the option for quite a while to use third party keyboards on their phones and tablets and have widgets (mini-applications like calculator, clock, weather etc.,) also on their devices. Specific non-infringing uses can also include adding features to older tablets that can have their software updated but are excluded from certain new features. For example, when Apple released iOS 6 a few years ago they made their digital virtual assistant Siri (to which you can speak instructions to and Siri searches online for your request) available to existing iPad 3 owners who performed the software update. iPad 2 and iPad 1 owners though were left in the cold with regard to this feature.

iPad 2 owners could still perform the iOS 6 update but they would not get Siri as a new feature with the update. It was not because of technological limits on the iPad 2's hardware but Apple just chose not to make Siri available on iPad 2. Some hackers though posted a method to get Siri running on a jail-broken iPad 2. I don't know about getting Siri on a jail-broken iPad 1 but the 2nd generation model is certainly capable of running Siri but Apple chose to not include it for iPad 2 owners.

Circumvention can also be helpful to the disabled for circumventing access controls on dedicated e-readers that may or may not have universal access functionality to add-in or enable such functionality through the use of third party application software or extensions. Fair uses of such devices should be acknowledged and protected with an exemption. The works will be used to allow anyone with a tablet to have interoperability and open access between their devices – that is allowing them to run the software of their

choice on their devices regardless of whether or not it is included in Apple's iOS App Store. Users should be free to jail-break their iPads to run non App Store approved apps that are legal and safe but fail to comply with Apple's strict guidelines. For example, users can run tethering applications on their mobile devices or jailbreak their iPads with cellular connectivity to work on another carrier's network. These freedoms will be for the consumer – i.e. anyone owning an iPad or similar device. When I buy an Apple product I expect I own that product. I am typing this petition on my 2009 MacBook Pro. Apple should not be able to control how I use my tech products nor should any company.

Item 6. Adverse Effects.

Technologically speaking circumventing DRM restrictions is possible but legally speaking the uncertainty, and fear over violating copyrights is what is often holding technological advances and fair use rights back. Adverse effects from not extending these protections at the very least to tablets will result in this continuing to be a gray area for the consumer who will be confused and frustrated why I cannot root or jailbreak my tablet. If I can legally do so for my phone why I cannot do so with my tablet also.

Circumvention of digital restrictions management on any classes not covered by the Copyright Office can result in civil and/or criminal penalties. However, we have now reached a point in which copyright trumps fair use. The entertainment industry just a few short years ago tried to ram through Congress a one-sided Internet blacklist bill, which went down to defeat with the help of tech giants including Google. There are big companies invested in the status quo against fair use unfortunately who want to eliminate those protections and fight against maintaining and extending them. There are also patent and copyright trolls unfortunately who sue tech companies using their ideas. If this exemption makes sense for phones it should make sense for tablets also even if it is only extended to tablets and not other wireless devices like dedicated e-readers it should also cover tablets.