

*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 25 pages in length (which may be single-spaced but should be in at least 12-point type), not including any documentary evidence attached to the comment. The italicized instructions on this template may be deleted.*

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

**Check here if multimedia evidence is being provided in connection with this comment**

*Please note that such evidence must be separately submitted on a disc or flash drive. See the Notice of Proposed Rulemaking for detailed instructions.*

### **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.)*

TracFone Wireless, Inc.  
9700 NW 112th Avenue  
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TracFone may be contacted through its authorized representative who prepared these comments:

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

*Identify the proposed exemption that your 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 11: Unlocking – wireless telephone handsets

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.

### **Item 3.Overview**

*Provide a brief summary of the circumvention activity sought to be exempted or opposed and why.*

TracFone opposes the lack of any protection against the proposed exemptions being exploited by handset traffickers and subsidy thieves who victimize American consumers and wireless providers.

Every one of the proponents of exemptions for wireless telephone handset unlocking omits a critical fact from their filings – the pro-consumer reason that wireless handsets are locked in the first place.

Prepaid wireless service providers in the United States like TracFone subsidize and discount the retail price of their phones to make them affordable to consumers, often reducing their prices significantly below the wholesale cost. Service providers recoup their subsidy investments over time, through charges their customers pay to use the subsidized phones on their networks.

With more than 26 million customers nationwide, TracFone is the #1 prepaid wireless service provider in the United States, and prides itself on offering “the least expensive way to own and use a cell phone in America.” TracFone offers its customers a wide range of phone options, including smartphones with prices as low as \$9.99. TracFone’s affordable prices make wireless service accessible to a wide range of Americans.

But service providers in foreign countries do not subsidize wireless handsets. The subsidies offered by TracFone and other U.S. wireless companies create an opportunity for criminal wireless phone traffickers to buy phones here and export them overseas for profit – stealing the subsidies that were intended to benefit legitimate American consumers. Traffickers use various illegal and fraudulent methods to obtain subsidized phones, and have created a wave of violent street crime in U.S. cities that caused police departments from New York to San Francisco to establish special enforcement units to deal with the problem.

For many years, TracFone has taken aggressive action to protect consumers from phone traffickers and to preserve TracFone’s ability to offer low priced, high quality subsidized phones to its customers. The first and most important line of defense against trafficking is locking phones so they cannot be used on foreign networks.

TracFone protects its phones with locks that prevent traffickers from modifying its copyrighted software embedded in each phone in order to use the phone on foreign networks. Traffickers who circumvent those locks for the purpose of stealing consumer subsidies have been sued by TracFone for violations of the DMCA. TracFone is the only wireless service provider to use this copyrighted software, and no other provider has asserted claims under the DMCA. Therefore, TracFone is uniquely qualified to address the issues raised in this proposed exemption.

TracFone’s DMCA lawsuits have been tremendously successful in stopping subsidy thieves from trafficking in TracFone handsets. Since 2005, TracFone has filed 85

lawsuits asserting DMCA claims against 208 traffickers and obtained permanent injunctions and final judgments totaling more than \$300 million.

TracFone is fiercely pro-consumer. TracFone has not, and will never, pursue claims against legitimate consumers for unlocking phones. In fact, TracFone is working closely with its handset manufacturers to redesign the locking mechanism in TracFone handsets to permit them to be unlocked by consumers once TracFone has recouped its subsidy investment in the phone.

TracFone supports a pro-consumer exemption to 17 U.S.C. §1201 that permits legitimate consumers acting in good faith to unlock their wireless telephone handsets, so long as the exemption expressly excludes any provision that could be exploited by traffickers to steal subsidies and harm consumers.

TracFone opposes, therefore, the exemptions proposed by Consumers Union, the Competitive Carriers Association, the Institute of Scrap Recycling Industries, Pymatuning Communications, and the Rural Wireless Association because they go beyond good faith unlocking by consumers, and could be construed to immunize illegal activities of phone traffickers. Such an overbroad exemption would harm consumers because it would result in higher handset and wireless service prices and would hinder wireless providers' ability to innovate with new subsidy and discount programs.

TracFone further notes that the Office has made clear that the burden is on the proponent of an exemption to "prove by a preponderance of the evidence that the harm alleged is more likely than not" to occur if their proposed exemption is not enacted.<sup>1</sup> Proponents have fallen very far short of carrying that burden in the present proceeding. Proponents speculate that consumers *may* be inhibited from moving their handsets to new carriers absent adoption of their proposed exemption, but have not provided evidence that any consumer has ever been sued under the DMCA for unlocking, or has chosen not to unlock because of a threat or fear of DMCA liability. The speculation about possible harm recited by proponents is insufficient to meet the evidentiary burden the Office has required and, absent such evidence, the Register should refrain from recommending the proposed exemptions.

If the Register does recommend an exemption for handset unlocking, however, in order to avoid adverse effects on consumers and the wireless market generally, such exemption must not exempt unlocking of handsets prior to the time the service provider has recovered its subsidy investment in the device and must not exempt any unlocking activity that is perpetrated with the intent to profit from the subsidy. TracFone submits that the following language would accomplish that objective:

Computer programs, in the form of firmware or software, that enable used wireless telephone handsets to connect to a different wireless telecommunications network than the network to which it was locked

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<sup>1</sup> 2010 Recommendation at 10.

(the “Original Network”), but only if: (a) such unlocking is not for the purpose of profiting from any subsidy, discount, installment plan, lease, rebate or other incentive program (collectively, “Subsidy”) offered by the Original Network service provider; (b) all obligations to the Original Network service provider associated with the provision of the Subsidy have been satisfied or waived; and (c) such unlocking is not for any unlawful purpose, including, but not limited to, obtaining unauthorized access to a wireless network.

**Item 4. Technological Protection Measure(s) and Method(s) of Circumvention**

*Describe the TPM(s) that control access to the work and the relevant method(s) of circumvention. The description should provide sufficient information to allow the Office to understand the nature of the relevant technologies, as well as how they are disabled or bypassed.*

TracFone offers highly desirable wireless devices from well-known manufacturers such as Apple, Samsung, and LG for sale to the public through retailers nationwide, through online sales, and via telesales.<sup>2</sup> Many TracFone handsets include customized software and firmware that enable the devices to operate on carriers with which TracFone has contracted to provide network services to its customers, and to implement TracFone’s pay-as-you-go business model.<sup>3</sup> In order to ensure that TracFone has a reasonable opportunity to recover its subsidies, the custom software on TracFone devices is written to lock the devices and prevent them from being moved to an alternative carrier. Unlocking of a TracFone device thus requires circumvention of those locks by modification or removal of TracFone’s custom software.<sup>4</sup>

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<sup>2</sup> Handsets available from TracFone change over time depending on region, market demand and manufacturing timelines. For a list of currently available handset models available for use in a given area, see the website of one of TracFone’s seven brands, such as: [http://www.tracfone.com/e\\_store.jsp?task=buyphone&lang=en](http://www.tracfone.com/e_store.jsp?task=buyphone&lang=en) (last visited Mar. 24, 2015); or <http://www.straighttalk.com/wps/portal/home/shop/phones> (last visited Mar. 25, 2015).

<sup>3</sup> See e.g. U.S. Copyright No. TX0006515894 (filed Sept. 15, 2006) (registering a version of TracFone’s computer program for cellular handset-resident prepaid system); *TracFone Wireless, Inc. v. SND Cellular, Inc.*, 715 F. Supp. 2d 1246, 1260 (S.D. Fla. 2010) (discussing the copyrighted software and how it is modified and copied by phone traffickers); FED. COMM’NS. COMM’N., DA 14-1862, *Seventeenth Mobile Wireless Competition Report* 82 ¶ 161 (2014), [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-14-1862A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-14-1862A1.pdf) (“There are several MVNOs who also provide service in the prepaid space. The largest of these is TracFone, which runs on the networks of all four nationwide providers.”).

<sup>4</sup> Comments by exemption proponents have described specific locking technologies. Those descriptions make clear that the acts necessary to unlock a phone can range from simply entering a model-specific code, to copying and “hacking” the security mechanisms put into place by the device supplier. As described by the Institute of Scrap Recycling Industries, Inc.:

In some cases, external software can circumvent the TPM and directly change the relevant setting or cause the device to run code to change the setting—usually by modifying a variable or replacing a short piece of code. In others, the operating system of the device must be temporarily altered to permit new software to run on the device itself and modify the relevant setting; typically, the software is then returned to its original condition. In either case, the software often must make use of security defects in the

**Permitted unlocking by consumers.**

17 U.S.C. §1201(a)(1)(A) prohibits “circumvent[ing] a technological measure that effectively controls access to” a work of authorship protected by the Copyright Act. Section 1201(a)(3) goes on to state that to “‘circumvent a technological measure’ means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner” (emphasis added). To the extent TracFone provides a handset owner acting in good faith with a method of unlocking a TracFone handset after a reasonable subsidy recovery period, the consumer would be acting with the authority of the copyright owner and there would be no prohibited circumvention.<sup>5</sup> No DMCA exemption is necessary to protect such consumers.

The exemptions under consideration, therefore, could only apply to unlocking done without the cooperation of the handset provider.

**Bulk unlocking by phone traffickers.**

Because of the desirability of TracFone’s subsidized devices, their low purchase price, lack of a term service contract requirement, and their widespread availability, TracFone has repeatedly been targeted by phone traffickers and other persons who seek to take advantage of TracFone’s subsidized handset pricing, but deny TracFone the ability to recoup its subsidy and associated costs. Phone traffickers are not consumers acting in good faith.<sup>6</sup> Phone traffickers use technological means to override protections built into the devices in order to unlock the TracFone handsets for use on other networks, and then resell those unlocked devices for profit. Phone traffickers take advantage of the subsidies offered by TracFone and other carriers to enable legitimate consumers to purchase low cost phones, but deny the carriers the ability to recover that subsidy through usage

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device in order to run software or make changes that the carrier and manufacturer have not approved.

Institute of Scrap Recycling Industries, Inc., Comments Submitted in Response to U.S. Copyright Office’s December 12, 2014 Notice of Proposed Rulemaking (“ISRI Comments”), at 7 (2015) (emphasis added).

Different unlocking methods entail different acts that fall within the bounds of the exclusive rights granted to the copyright holder. All unlocking acts, therefore, should not be treated equally. While some such acts may be as simple as entering a code, others involve code analysis, hacking, and creating derivative works of proprietary software. To argue that all unlocking is non-infringing, or outside the bounds of the exclusive rights of the copyright holder, therefore, and to treat all unlocking equally under an exemption regardless of how it is performed, would be to rely on a misleading oversimplification of the technological realities. In the case of many TracFone handsets, unlocking requires unauthorized copying and modification of TracFone’s proprietary software. *See SND Cellular*, 715 F. Supp. 2d at 1260 (discussing the infringement of TracFone’s software by traffickers in the context of a default judgment).

<sup>5</sup> See TRACFONE, *Unlocking Policy*, [http://www.tracfone.com/facelift/unlocking\\_policy.jsp](http://www.tracfone.com/facelift/unlocking_policy.jsp) (last visited Mar. 24, 2015) (summarizing TracFone’s efforts to develop secure solutions that allow unlocking without jeopardizing device security).

<sup>6</sup> Attached to these comments as Exhibit 1 is a list of lawsuits TracFone has brought against traffickers in response to their illegal attempts to profit from TracFone’s handset subsidies.

charges over time.<sup>7</sup> Perhaps more importantly, by emptying retail shelves of inventory that would otherwise be available for purchase by legitimate customers, traffickers are denying TracFone sales and business relationships to potential long-term customers, and denying those customers the opportunity to benefit from the subsidies offered by TracFone.

The most common method of bulk unlocking of TracFone devices is the use of hardware devices custom-made for the purpose. Such devices are not authorized by TracFone or the handset manufacturer, and are often purpose-built to overcome copy protection features in TracFone's copyrighted software. Such unlocking devices typically copy and analyze the software and firmware on the phone during the flashing process. Such copying is not permitted by TracFone and is not a fair use or essential to the operation of the software. Overcoming the technological measures used by TracFone to prevent such activities is a violation of Section 1201.<sup>8</sup>

From 2005 to the present, TracFone has filed lawsuits against 208 phone trafficker defendants in federal courts across the United States, and has obtained 74 final judgments and permanent injunctions in its favor.<sup>9</sup> In these cases, courts have concluded that unlocking by these means are violations of Section 1201 and are not for the purpose of "lawfully" connecting to an alternative network.<sup>10</sup> In one such decision, the United States District Court for the Southern District of Florida found liability under Section 1201 for unlocking or reflashing "at minimum 4,548 TracFone Prepaid Phones."<sup>11</sup> It cannot seriously be argued that a sophisticated operation based on purchasing thousands of handsets, unlocking them immediately, and then reselling them is the same as legitimate consumers acting in good faith to retain their phone after the completion of a reasonable subsidy recovery period. These cases thus make clear that bulk unlocking is not limited to consumers and resellers acting in good faith. Many parties engaging in bulk unlocking are illicit operations, some with known associations with criminal and terrorist organizations, illegally attempting to profit by stealing the subsidies paid for by handset providers in order to make their products and services available at lower prices to legitimate consumers. There is no legitimate basis for exempting such activity from the DMCA.

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<sup>7</sup> *Id.*

<sup>8</sup> See e.g. *SND Cellular*, 715 F. Supp. 2d at 1260 (finding violation of the DMCA based on bulk unlocking by phone traffickers of at least 4,548 handsets).

<sup>9</sup> See Exhibit 1.

<sup>10</sup> See e.g. *TracFone Wireless, Inc. v. Dixon et al.*, 475 F. Supp. 2d 1236, 1238 (M.D. Fla. 2007) ("The defendants' misconduct and involvement in unlocking TracFone handsets was for the purpose of reselling those handsets for a profit, and not 'for the sole purpose of lawfully connecting to a wireless telephone communication network.'") (quoting Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 71 FR 68472-01).

<sup>11</sup> *SND Cellular*, 715 F. Supp. 2d at 1262.

**Proponents claim to support the interests of consumers, but their proposals benefit phone traffickers.**

Proponents propose exemptions similar or identical to the following exemption proposed by Competitive Carriers Association:

Computer programs, in the form of firmware, software, or data used by firmware or software, that enable wireless handsets to connect to a wireless network that offers telecommunications and/or information services, when circumvention is initiated by the owner of the device, or by another person at the direction of the owner of the device, in order to connect to a wireless network that offers telecommunications and/or information services, and access to the network is authorized by the operator of the network.<sup>12</sup>

They then advocate for such exemptions by citing the interests of consumers. While their arguments acknowledge the legitimate rights of carriers to recover the subsidies from the initial purchaser,<sup>13</sup> nothing in their proposed text limits the exemption to consumers acting in good faith after subsidies have been recovered.<sup>14</sup> Instead, they propose very broadly worded exemptions with virtually no limitations. Absent revisions, or at the very least official comments in the record making clear that the intent of the exemption is not to benefit traffickers, such limitations could be interpreted to provide loopholes for traffickers intending to steal the subsidies offered by providers like TracFone and thus imperil TracFone's ability to offer subsidized phones to consumers.<sup>15</sup>

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<sup>12</sup> Competitive Carriers Association, Comments Submitted in Response to U.S. Copyright Office's December 12, 2014 Notice of Proposed Rulemaking ("Competitive Carrier Comments"), at 2 (2014) (emphasis added).

<sup>13</sup> See e.g. *id.* at 7 ("[O]wners should not be beholden to the carrier after completion of service agreement commitments") (emphasis added); Consumer Union, Comments Submitted in Response to U.S. Copyright Office's December 12, 2014 Notice of Proposed Rulemaking ("Consumer Union Comments"), at 16 (Feb. 6, 2015) ("[I]n a free market, once a consumer's contract expires, she should be able to take her device to another carrier." (quoting Ajit V. Pai, Don't Treat Consumers Like Criminals, N.Y. Times, June 5, 2013, at A23) (emphasis added)); eBay, Inc. and Gazelle, Inc., Comments Submitted in Response to U.S. Copyright Office's December 12, 2014 Notice of Proposed Rulemaking, at 1-2 (stating "[w]e support the petitions for exemption to allow a reseller to unlock an eligible phone" and defining "eligible" to mean that the "[subsidy recovery] period has expired" (emphasis added)); ISRI Comments, at 22 ("Once the carrier has been paid for its device subsidy, there is no reason the phone should not be able to be unlocked and the consumer free to choose a new carrier." (emphasis added)). Each of the foregoing comments acknowledge the interest the original handset provider has to enforce a period during which the consumer is required to use the handset in conjunction with the distributor's services so that the distributor has a fair opportunity to recover its subsidy.

<sup>14</sup> Note that in prior trafficking cases brought by TracFone, the courts considered prior DMCA exemptions that included the wording "for the sole purpose of lawfully connecting to a wireless telephone communication network. See e.g. *Dixon*, 475 F. Supp. 2d at 1238; *SND Cellular* at 715 F. Supp. 2d at 1261 (concluding that bulk unlocking and reflashing for resale was not a lawful purpose). The proposed exemptions lack even this nod to allowing courts to consider the purpose of the unlocking as part of a their determination of whether the proposed exemption should apply in a given set of circumstances.

<sup>15</sup> In the context of one trafficking case, the District Court considered the 2008-8 Rulemaking on Exemptions from Prohibition on circumvention of Copyright Protection Systems for Access Control

It is also important to note that while proponents argue that absent such an exemption, consumers are living under a threat of prosecution under the DMCA,<sup>16</sup> TracFone could not locate a single action that has been brought against a consumer for unlocking a handset in good faith. To the contrary, the only DMCA cases that appear to have ever been brought for phone unlocking have been the cases TracFone has brought against illicit phone traffickers.<sup>17</sup> TracFone has no interest whatsoever in incurring the legal expenses necessary to bring claims against individual consumers. The “risks to consumers” asserted by proponents, therefore, are at best speculative, while the threat to providers of subsidized handsets posed by traffickers purchasing and selling thousands of unlocked handsets has already been demonstrated repeatedly to be real and immediate.

### **Item 5. Asserted Noninfringing Use(s)**

*Explain the asserted noninfringing use(s) of copyrighted works said to be facilitated by the proposed exemption, including all legal (statutory or doctrinal) bases for the claim that the uses are or are likely noninfringing. Commenters should provide an evidentiary basis to support their contentions, including discussion or refutation of specific examples of such uses and, if available, documentary and/or separately submitted multimedia evidence.*

Petitioners in support of an exemption for Class 11 cite four asserted non-infringing uses: (i) modification of a computer program by the owner of a copy of that computer program under 17 U.S.C. §117; (ii) that changing the contents of a variable used by a computer program does not constitute a violation of any of the exclusive rights enumerated under 17 U.S.C. §106; (iii) that “reflashing” a device with or without the use of specialized hardware does not constitute a violation of any of the exclusive rights enumerated under 17 U.S.C. §106; and (iv) modification of software or firmware to allow use on another network constitutes fair use under 17 U.S.C. §107. None of these arguments, however, holds up under closer inspection.

### **17 U.S.C. §117.**

Section 117(a) provides in relevant part provides:

[I]t is not an infringement for the owner of a copy of a computer program to make or authorize the making of another copy or adaptation of that computer program provided: (1) that such a new copy or adaptation is

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Technologies in construing the exemption. *TracFone Wireless, Inc. v. Bequator Corp. Ltd.*, 2011 WL 1427635 at \*11 (S.D. Fla. 2011). Based on those comments, the court concluded that the intent of the exemption was not to immunize illegal activities of the defendant. *Id.* TracFone argues herein that, to the extent an exemption is recommended, that exemption should explicitly state that it is not intended to immunize the activities of traffickers or, at the very least, the official record of the proceeding should make clear that the exemption is not intended to preclude DMCA actions against traffickers.

<sup>16</sup> Consumer Union Comments, at 3 (“The threat of DMCA liability discourages consumers from taking their devices to different networks – even after they have completed their contractual obligations with their original carrier.”); Competitive Carrier Comments, at 10 (“Failure to grant an exemption would reinstate criminal penalties that may prevent consumers from switching carriers”).

<sup>17</sup> See Exhibit 1 (listing TracFone trafficking cases).



created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner.

A showing of non-infringement under Section 117(a), therefore requires three factual findings: (i) that the accused infringer is the “owner of a copy,” (ii) that the copy or adaptation “is created as an essential step in the utilization of the computer program,” and (iii) “that it is used in no other manner.”

In support of their arguments that unlocking is a non-infringing use, at least two proponents refer to *Vernor v. AutoDesk, Inc.*, 621 F.3d 1102 (9th Cir. 2010) and *Krause v. TitleServe, Inc.*, 402 F.3d 119 (2d Cir. 2005).<sup>18</sup> Neither of these cases, however, has anything to do with handset unlocking. In *Vernor*, a defendant purchased installation media for computer aided design software on an online auction site from the original licensee, and in *Krause*, a company hired a developer to write custom software and then corrected bugs and added new features to that software after a dispute arose with that developer. Neither case addressed or referenced facts in which a consumer or trafficker purchases a device with embedded software and then modifies or circumvents that software without the consent of the copyright holder.

Another earlier case addressing Section 117(a)(1) is *DSC Communications Corp. v. Pulse Communications, Inc.*, 170 F.3d 1354 (Fed. Cir. 1999). *DSC* considers issues relating to embedded software, but the subject software was not on consumer devices. In that case, the software is used by competing interface cards in telecommunications equipment, another very different factual scenario.

While each of these cases discuss factors used to make the necessary factual determinations under Section 117(a)(1), none of them is factually similar to a consumer, or a phone trafficker, unlocking cellular handsets by modifying embedded software. What each of these cases does do, however, is attempt to apply a series of factors to determine whether or not Section 117(a)(1) should be applied in a given situation. In doing so, the cases illustrate two indisputable points: (i) such a determination is highly fact-specific and requires a careful evaluation of the circumstances in each case, and (ii) each of the three courts enunciated a different set of factors to be applied in making the ultimate determination.

Despite the circuit-specific and highly fact-intensive nature of each of the inquiries in these cases, proponents argue that a broad unlocking exemption is needed because unlocking is a non-infringing use under Section 117(a)(1) in all cases.<sup>19</sup> In asking the Register to conclude that Section 117(a)(1) qualifies as a non-infringing use that must be protected by an exemption to Section 1201, proponents are asking the Register to recommend an exemption that bypasses the factual tests enunciated by these courts to determine if Section 117(a)(1) applies to the case under consideration. Defendants seeking to use the exemption as a shield would not be required to show that they are

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<sup>18</sup> See Competitive Carriers Comments, at 5; and ISRI Comments, at 11.

<sup>19</sup> *Id.*

owners of the copy under any of the three tests. Nor would they have to provide evidence that their use is an essential step in using the software, or that no other use is being made. Such an exemption should not be enacted absent compelling evidence that all persons who possess handsets are owners of the copies of the embedded software and that all unlocking otherwise meets the requirements of Section 117(a)(1).

TracFone respectfully argues that proponents have fallen far short of providing sufficient evidence for the Register to conclude that all unlocking is non-infringing under Section 117. To the extent the Register were to rely on Section 117(a)(1) to find a non-infringing use that supports an exemption, such an exemption should be limited to situations in which appropriate findings are made by courts on a case-by-case basis. Without such a limitation, however, the Register will effectively be finding that in all cases, all handset owners are owners of software copies and not licensees regardless of the agreements they enter into when purchasing the handsets, and that unlocking is always an essential step in using the copy regardless of how the unlocking is performed and regardless of whether it is done by a consumer acting in good faith or a trafficker seeking to profit by stealing the subsidies paid for by the carriers. TracFone respectfully submits that it would be improper for the Register to recommend a broad exemption that removes those legislatively defined elements from the Section 117(a)(1) inquiry in the context of all handset unlocking situations.

### **Fair Use.**

Just as a determination that a given activity is non-infringing under Section 117(a)(1) requires a fact-specific inquiry, a determination of fair use requires analysis of the statutory factors set forth in 17 U.S.C. § 107. Here again, this is a situation-specific, fact-intensive inquiry that defendants could bypass were a broad exemption implemented that assumed, without compelling evidence, that all unlocking of all handsets qualifies as fair use in all situations, regardless of how it is performed and whether it is performed by consumers who have fulfilled their commitments under their initial purchase agreements, or illicit traffickers seeking to profit by stealing the subsidies paid for by the original handset supplier.

In advocating for their proposed exemptions, certain proponents argue in summary fashion without offering any competent evidence relating to the factors.<sup>20</sup> Other proponents argue about the fourth factor: “the effect of the use upon the potential market for or value of the copyrighted work.”<sup>21</sup> The arguments essentially assert that allowing

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<sup>20</sup> See e.g. Competitive Carriers Comments, at 4 (reciting the factors, but not providing objective evidence that the factors are met in all cases by all unlocking activities, and considering only unlocking scenarios that involve entering unlocking codes as opposed to unlocking scenarios that require modification of the software itself).

<sup>21</sup> 17 U.S.C. §107(4); see e.g. ISRI Comments, at 8 (“[U]nlocking has no negative effect on the market or value for the mobile device’s carrier locking software. Quite the opposite: the ability to lawfully unlock mobile devices likely increases the value of those devices (including the embedded software) because the owner gains the ability to switch to a preferred carrier and because the resale value of the device increases. The modified software at issue here is in no way being offered to the market of phone makers such that it could usurp the original market.”).

handsets to be transferred to other users increases the market value of used handsets as it enables the units to be resold and the software in those units to be used for longer periods of time by more users.<sup>22</sup> Such arguments, however, are not supported by competent evidence and do not properly assess the “potential market for or value of” the original software.

As is described above, many TracFone handsets come preinstalled with custom software developed by TracFone. The software is designed to enable TracFone handsets to access carriers with which TracFone has contracted, and to do so on a prepaid basis. TracFone has made substantial investments in that software and is the copyright holder.<sup>23</sup> Given that subsidized hardware is sold to consumers for less than the cost of the handsets (including their embedded software), TracFone can receive value for that software (and for the fees it is required to pay the handset manufacturers for other embedded software in the handsets) only through the initial purchase price and the usage charges paid by customers.

To the extent an exemption for Class 11 would permit unlocking of a handset before recovery of the applicable subsidy by the first distributor, TracFone would be denied the right to receive fair value for its custom software or to recover the fees it pays to manufacturers for any embedded software included by those manufacturers. Traffickers and consumers acting in bad faith could purchase any number of subsidized handsets at independent retail stores and immediately unlock those subsidized handsets and transfer them to other carriers or countries such that TracFone would not have an opportunity to recover any value for the investment made in its own software. Nor would TracFone be able to recover its subsidy on the handset, meaning that the subsidized value TracFone paid for other embedded software on that handset would effectively be stolen whenever the handset is unlocked prior to that subsidy having been recovered. The result would be that the value of the software to the copyright holder (TracFone) would be dramatically reduced in the case of the TracFone’s own software, and the value of other embedded software on the device to its copyright holder (in most cases the device manufacturer) would be reduced as TracFone’s ability to purchase those handsets and then resell them on a subsidized basis would be compromised.

Contrary to proponents’ arguments, the focus of the factor recited in Section 107 is not on the value of the handset after the initial consumer purchase. The focus is on the value of the work of authorship with respect to the copyright holder. To argue that the value of TracFone’s proprietary software with respect to the copyright holder (TracFone) is increased if the software can be modified so that TracFone need not receive compensation for the software defies logic. To argue that compromising TracFone’s ability to subsidize handset purchases by allowing consumers to unlock handsets prior to the recovery of those subsidies has no effect on the value of the software that the manufacturers provide on the devices purchased and resold by TracFone is also illogical. The value of the software on those handsets is maximized when providers like TracFone

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<sup>22</sup> *Id.*

<sup>23</sup> *See e.g.* U.S. Copyright No. TX0006515894 (filed Sept. 15, 2006).

can sell devices under subsidy-based business models that make those handsets available to more consumers. Compromising this business model undermines the value of the software on those handsets.

**Entering of codes does not require making a copy or creating a derivative work.**

Proponents further argue that entering codes to unlock handsets does not create a derivative work and, as such, is not an infringing act.<sup>24</sup> As set forth above, to the extent unlocking is performed with the consent of a device provider, no exemption is needed and, therefore, the argument is moot.

If no exemption is needed for unlocking permitted by the original service provider, the proponent's arguments can only be fairly interpreted as suggesting that entering a code that was obtained by illicit means (i.e. without the consent of the handset provider) is a non-infringing use of the phone software. One difficulty with such an argument is that unlocking codes are not easily derived or guessed without the help of the provider. Determining an unlocking code that will work on a given device requires analysis of the software on the device, often involving the use of advanced software engineering tools that copy, analyze, and reverse engineer the code for the purpose of tricking the software into accepting a code that was not freely given to the consumer by the handset provider.<sup>25</sup>

While proponents' arguments that entry of a code into software by a consumer does not create a copy or a derivative work may be true in isolation, those arguments ignore the fact that the determination of that code, if it is done without the consent of the handset provider or maker, will typically require the making of unauthorized copies of the copyrighted work in question. It also ignores the fact that not all unlocking is done in this manner. Accordingly, to the extent the Register concludes that a proposed exemption is justified in reliance on the rationale that entry of a code does not exercise the exclusive rights of the copyright holder under 17 U.S.C. §106, the Register should also acknowledge that the derivation of such codes can require an infringing act, and that not all unlocking is performed in this way.

To avoid creating arguments that the original infringement is also immunized by the exemption, or arguments that unlocking by modifying the instructions in the software is also permitted, any recommended exemption should make clear that the non-infringing use protected by the exemption justified by that rationale (if the Register finds that sufficient evidence exists in the record to support this finding) only applies in situations in which unlocking is performed by entry of an unlocking code that was authorized by the device provider, and not where unlocking involves software instruction modification.

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<sup>24</sup> Competitive Carriers Comments, at 4; ISRI Comments, at 10.

<sup>25</sup> See ISRI Comments, at 5 (“In some cases, external software can circumvent the TPM and directly change the relevant setting or cause the device to run code to change the setting—usually by modifying a variable or replacing a short piece of code. In others, the operating system of the device must be temporarily altered to permit new software to run on the device itself and modify the relevant setting; typically, the software is then returned to its original condition. In either case, the software often must make use of security defects in the device in order to run software or make changes that the carrier and manufacturer have not approved.”).

Entry of illegitimate codes derived through infringing acts, and rewriting proprietary software to avoid protection mechanisms, should not be deemed a non-infringing fair use and should not be excused by such an exemption.

**Reflashing does not create a copy or a derivative work.**

At least one proponent also argues that reflashing a device is a non-infringing use.<sup>26</sup> TracFone does not disagree that simple removal of one memory storage device and insertion of another would not necessarily constitute an infringing act. However, that is not how reflashing of wireless handsets is performed. Courts that have considered trafficking of reflashed wireless devices have found that such reflashing typically involves copying the contents of the device before the new code is uploaded.<sup>27</sup> Reflashing may also require making an illegal copy of the code for analysis purposes such as determining memory boundaries and operational characteristics of the software.<sup>28</sup> Each of these acts is within the exclusive rights guaranteed to the copyright holder under Section 106 and would, therefore, constitute an infringing act and not a non-infringing use as asserted by the petitioner.

To the extent that the Register determines that reflashing may constitute a non-infringing use, the Register should make clear that its exemption applies only to reflashing techniques that do not use or require, at any point, the copying or modification of software on the handset without the copyright holder's consent, or situations where a court has made sufficient factual findings and concluded that the copying used is, indeed, fair use. All other reflashing techniques are infringing uses or based on unsupported fair use arguments and, as such, should not be protected by any exemption to Section 1201.

**Conclusion.**

TracFone respectfully argues that there is insufficient evidence in the record to conclude that (i) all unlocking is non-infringing by virtue of Section 117; (ii) unlocking is fair use regardless of whether it is performed by a good faith consumer or an illegal phone trafficking operation; (iii) entering an unlocking code, regardless of how that code is obtained, never involves an infringing act; or (iv) unlocking by reflashing never involves making an illegal copy. Such determinations are highly fact-specific and courts should not be denied the opportunity to reach the proper conclusions based on the circumstances in each case, particularly given the paucity of evidence in this record to support broad allegations such as allegations that all handset users own copies of all software on their handsets, that no unlocking methods involve infringement of software developed and owned by the handset provider, or that all unlocking (regardless of whether it is performed by a consumer acting in good faith or an illicit trafficking operation) is fair use.

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<sup>26</sup>ISRI Comments, at 10.

<sup>27</sup> See *e.g. Dixon*, 475 F. Supp. 2d at 1236 (finding Section 1201 violations in the context of unlocking, including unlocking by reflashing); and *SND Cellular*, 715 F. Supp. 2d at 1246 (same).

<sup>28</sup> See ISRI Comments, at 5 (discussing ways code must be analyzed and modified to enable security breaches used in unlocking scenarios).

## **Item 6. Asserted Adverse Effects**

*Explain whether the inability to circumvent the TPM(s) at issue has or is likely to have adverse effects on the asserted noninfringing use(s), including any relevant legal (statutory or doctrinal) considerations. Commenters should also address any potential alternatives that permit the asserted noninfringing use(s) without the need for circumvention. Commenters should provide an evidentiary basis to support their contentions, including discussion or refutation of specific examples of such uses and, if available, documentary and/or separately submitted multimedia evidence.*

As is set forth above, TracFone respectfully argues that proponents have failed to identify any non-infringing use that would be adversely affected absent the proposed exemption. The examples cited by proponents center on the activities of consumers acting in good faith after completing contractual commitments, and ignore the activities of handset traffickers that free-ride by stealing subsidies immediately upon purchase of a handset without fulfilling any contractual commitment. Even with respect to consumers, however, TracFone respectfully argues that the asserted adverse effects on consumers are overstated by proponents.

One argument made by proponents is that the availability of unlocked devices does not alleviate the need for an exemption because not every handset can be purchased in unlocked form.<sup>29</sup> While that may be technically true, it is also true that virtually all of the most popular handsets are easily available for purchase without locks. The ten most popular handset models in 2014 were, in order:

1. Apple iPhone 5S
2. Samsung Galaxy S5
3. Samsung Galaxy S4
4. Samsung Galaxy Note 3
5. Apple iPhone 5C
6. Apple iPhone 4S
7. Xiaomi MI3
8. Samsung Galaxy S4 mini
9. Xiaomi Hongmi Red Rice
10. Samsung Galaxy Grand 2<sup>30</sup>

A brief internet search will confirm that all but the two Xiaomi models, which are not sold for the U.S. market,<sup>31</sup> are available in unlocked condition from sellers including online retailer Amazon.com.<sup>32</sup> When it is understood that the most popular handsets are

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<sup>29</sup> Competitive Carrier Comments, at 9 (“Although some, but by no means all, handsets are available in an unlocked form, a consumer may not find her desired handset as one of the unlocked options.”).

<sup>30</sup> Milagros Valdez, *The 10 Top Selling Smartphones in the World 2014*, INSIDER MONKEY (Oct. 31, 2014, 7:46 AM), <http://www.insidermonkey.com/blog/the-10-top-selling-smartphones-in-the-world-2014-334251/> (incorporating data from *Counterpoint* published in *Monthly Market Pulse*).

<sup>31</sup> See Robert Hof, *Chinese Phenom Xiaomi Coming to US – Without Its Hot Smartphones*, FORBES (FEB. 12, 2015, 5:48 PM), [www.forbes.com/sites/roberthof/2015/02/12/chinese-phenom-xiaomi-coming-to-us-without-its-hot-smartphones/](http://www.forbes.com/sites/roberthof/2015/02/12/chinese-phenom-xiaomi-coming-to-us-without-its-hot-smartphones/).

<sup>32</sup> Attached to these comments as Exhibit 2 are copies of Amazon pages offering the most popular handsets for sale in the U.S. in unlocked condition.

routinely made available to consumers in unlocked condition, allegations that not “all” handsets can be purchased this way can be seen as focusing on exceptions and older models instead of the models that consumers find most desirable.

In addition, while proponents cite anecdotal evidence of unlocking problems from individual consumers, they acknowledge that the four largest carriers have signed on to a voluntary commitment to support unlocking after contract fulfillment.<sup>33</sup> According to the FCC, these four nationwide carriers accounted for nearly 96% of the nation’s mobile wireless services revenue in 2013.<sup>34</sup> Combining the facts that virtually all of the most popular handsets are available in unlocked form from well-known online retailers, and that the four major carriers covering the vast majority of the market allow consumer unlocking, it becomes clear that proponents’ arguments that consumers lack reasonable access to copyrighted works on unlocked handsets absent an exemption are greatly overstated. A broad exemption to Section 1201 should not be based on anecdotal evidence that some less popular handset models might not be readily available in unlocked form or that some consumers might have difficulty with the procedures set up by carriers that have signed on to the voluntary unlocking commitment. Much more substantial and reliable evidence that consumers are experiencing meaningful, real-world adverse effects should be required before an exemption is found to be justified.

Still further, while TracFone has provided numerous examples of actual cases that have been brought against illicit phone traffickers,<sup>35</sup> proponents have cited only a fear that DMCA cases may be brought against good faith consumers. TracFone has been unable to find a single such case that has actually been brought against a consumer as opposed to a phone trafficker. Proponents’ allegations that consumers are impeded by a fear of DMCA actions is thus speculative and anecdotal at best. It is doubtful that most consumers are even aware of the DMCA, or understand the acts that could trigger DMCA liability, or the exemptions under consideration in this proceeding. Accordingly, there is insufficient evidence in this record to conclude that the lack of a DMCA exemption is a meaningful factor in preventing any consumers acting in good faith from unlocking cell phones after contractual commitments are fulfilled and subsidy recovery periods completed.

Considered in light of the facts that (i) the most popular handsets are indeed available in unlocked form, (ii) the four largest carriers representing nearly 96 of the wireless services market have already implemented unlocking programs, and (iii) the DMCA cases brought for phone unlocking have all been against traffickers, and not consumers, TracFone

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<sup>33</sup> See ISRI Comments, at 17 (acknowledging the voluntary commitment, but arguing that it should be ignored due to perceived issues with its implementation by some carriers based on anecdotes); Consumers Union Comments, at 21 (same).

<sup>34</sup> FED. COMM’NS. COMM’N., DA 14-1862, *Seventeenth Mobile Wireless Competition Report* 16 ¶ 30 (2014), [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-14-1862A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-14-1862A1.pdf) (“The four nationwide service providers accounted for about 96 percent of the nation’s mobile wireless service revenue in 2013, up from 91.5 percent in 2012. The service revenues of Verizon Wireless and AT&T accounted for about 70 percent of total service revenue in 2013.”).

<sup>35</sup> See Exhibit 1 attached hereto.

respectfully submits that proponents' arguments that real-world consumers will suffer material adverse effects absent a broad unlocking exemption are overstated and not supported by sufficient objective evidence to justify the Register recommending the requested exemptions.

### **Item 7. Statutory Factors**

*Evaluate the proposed exemption in light of each of the statutory factors set forth in 17 U.S.C.*

*1201(a)(1)(C):*

- (i) the availability for use of copyrighted works;*
- (ii) the availability for use of works for nonprofit archival, preservation, and educational purposes;*
- (iii) the impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research;*
- (iv) the effect of circumvention of technological measures on the market for or value of copyrighted works; and*
- (v) any other factor that may be appropriate for the Librarian to consider in evaluating the proposed exemption.*

The most significant of the statutory factors in the case of the proposed Class 11 exemption are factors (i), (iv) and (v).

#### **(i) Availability for use of copyrighted works:**

The copyrighted works in question are the software and firmware on wireless handsets. Such works are available from a number of sources including purchase of unlocked phones from retailers as set forth above. Such phones are widely available, but are more expensive than locked phones. The reason locked phones are less expensive is because the purchase prices of such phones are subsidized by providers under a business model that allows for subsidy recovery over time as network services are consumed. To the extent any consumer feels that the subsidy recovery terms of the device provider are unreasonable, that consumer can easily purchase an unlocked device instead, or purchase a device from a different carrier. Consumers thus have a choice to take or leave TracFone's subsidies.<sup>36</sup>

The second way consumers can obtain unlocked phones is by completing their contractual obligations with the unit provider or buying out the remainder of the contract, and receiving an unlock code from the provider.<sup>37</sup> This option is also widely available

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<sup>36</sup> See FED. COMM'NS. COMM'N., DA 14-1862, *Seventeenth Mobile Wireless Competition Report* 72 ¶ 141 (2014), [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-14-1862A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-14-1862A1.pdf) ("Macquarie Research estimated that consumers who choose the no-contract installment payment option pay \$74 more per year on average than consumers on traditional contract plans with embedded handset subsidies. Under Macquarie's assumptions, the reduction in the handset subsidy raises the total cost to the consumer by more than the reduction in the price of the service plan lowers the total cost. On the other hand, because customers on installment payment plans are no longer under contract, they are free to switch providers whenever they want." (emphasis added) (footnotes omitted)).

<sup>37</sup> *Id.*



from many cell phone providers, and TracFone is working toward providing such options for future purchasers of TracFone phones.<sup>38</sup>

Because unlocked phones are widely available from at least two legitimate sources, it cannot be said that the copyrighted work in question (the software that operates the phone) is not widely available for non-infringing use absent the proposed exemption. To the extent the proposed exemption is drawn so broadly so as to apply to pre-recovery unlocking, any increase in the availability of the copyrighted work would be at the expense of the provider that was denied a fair opportunity to recover its subsidy on the initial purchase, and at the expense of consumers who will have to pay higher prices to providers to offset losses suffered due to trafficking. To the extent it is drawn to avoid protecting pre-recovery unlocking, it may marginally improve access to the underlying works, and in doing so would not harm the wireless marketplace.

**(iv) Effect on the market value of the copyrighted works.**

As has been described above, the proposed exemptions, to the extent they permit pre-recovery unlocking, would diminish the value of the underlying work to the copyright holder because such an exemption would most likely result in increased prices (and corresponding reduced demand) for new handsets, unless the exemption did not apply to pre-recovery unlocking.

**(v) Other factors appropriate for consideration.**

Technological and business model innovations in the wireless industry are ongoing and rapid. Any exemption, even if in place for only three years, could hamper innovation in the marketplace to the extent it restricts the ability of wireless providers to offer new and innovative subsidy models that allow those providers to make new technologies available at lower prices. Artificial limits or rules on when or how subsidy recovery periods should be assumed to have terminated will hamper such innovation. Were the exemption instead to be tied to the service offering as defined to by the device provider, innovation of service offerings would be encouraged as providers could then freely develop new business models with varying subsidy and recoupment models to account for market and technological change.

TracFone respectfully argues that another factor that should be considered by the Register is that any exemption that sets arbitrary unlocking deadlines or that denies device providers the freedom to implement new subsidy models as technologies and market conditions change would adversely impact consumers by dampening innovation in subsidy models among wireless providers.

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<sup>38</sup> See TRACFONE, *Unlocking Policy*, [http://www.tracfone.com/facelift/unlocking\\_policy.jsp](http://www.tracfone.com/facelift/unlocking_policy.jsp) (last visited Mar. 24, 2015) (summarizing TracFone's efforts to provide unlocking options).

**Item 8.Documentary Evidence**

*Commenters are encouraged to submit documentary evidence to support their arguments or illustrate pertinent points concerning the proposed exemption. Any such documentary evidence should be attached to the comment and uploaded through the Office's website (though it does not count toward the 25-page limit).*

In support of the foregoing conclusions and arguments, TracFone offers the following documentary evidence in addition to the publicly available sources, reports, and evidence cited in the foregoing comments:

Exhibit 1: List of phone trafficking cases brought by TracFone.

Exhibit 2: Examples of popular handsets for sale in the U.S. in unlocked condition.

## **EXHIBIT 1: Trafficking Lawsuits**

1. *Tracfone Wireless, Inc. v. Sol Wireless Group, Inc., Carlos Pino and Jorge Romero*, Case No. 1:05-cv-23279, U.S. District Court Southern District of Florida (filed 12/21/2005).
2. *Tracfone Wireless, Inc. v. Pan Ocean Communications, Inc. et al.*, Case No. 0:05-cv-61956-CMA, U.S. District Court Southern District of Florida (filed 12/27/2005).
3. *Tracfone Wireless, Inc. v. Clinton Riedeman d/b/a Larry's Cell, et al.*, Case No. 6:06-cv-01257-GKS-GJK, U.S. District Court Middle District of Florida, Orlando Division (filed on 08/23/2006).
4. *Tracfone Wireless, Inc. v. Ryan Maurice Dixon, et al.*, Case No. 6:07-cv-0013-GKS-JGG, U.S. District Court Middle District of Florida, Orlando Division (filed on 01/05/2007).
5. *Tracfone Wireless, Inc. v. Gregg Iser, et al.*, Case No. 1:07-cv-20429-PCH, U.S. District Court Southern District of Florida (filed on 02/16/2007).
6. *Tracfone Wireless, Inc. v. Mohammed Lalany and Max Wireless, Inc.*, Case No. 1:07-cv-20430, U.S. District Court Southern District of Florida (filed on 02/16/2007).
7. *Tracfone Wireless, Inc. v. Tayob, Khalid, et al.*, Case No. 1:07-cv-21227-AJ, U.S. District Court Northern District of Texas, Dallas Division (filed on 05/10/2007).
8. *Tracfone Wireless, Inc. v. Gasboy Texas, Inc.*, Case No. 1:07-cv-21243-JLK, U.S. District Court Southern District of Florida (filed on 05/11/2007).
9. *Tracfone Wireless, Inc. v. Phones Phones, Inc., et al.*, Case No. 1:07-cv-21242-JLK, U.S. District Court Southern District of Florida (filed 05/11/2007).
10. *Tracfone Wireless, Inc. v. Jalal Bros. Imports & Wholesale Corp.*, Case No. 3:07-cv-1226-B, U.S. District Court Northern District of Texas, Dallas Division (filed on 07/10/2007).
11. *Tracfone Wireless, Inc. v. Visheshver S. Narula, et al.*, Case No. 1:07-cv-22202-PCH, U.S. District Court Southern District of Florida (filed on 08/22/2007).
12. *Tracfone Wireless, Inc. v. Chothai, et al.*, Case No. 1:07-cv-22216-PAS, U.S. District Court Southern District of Florida (filed on 08/23/2007).
13. *Tracfone Wireless, Inc. v. Bitcell, Corp., et al.*, Case No. 1:07-cv-22249-PAS, U.S. District Court Southern District of Florida (filed on 08/28/2007).
14. *Tracfone Wireless, Inc. v. Glow International Inc., et al.*, Case No. 1:07-cv-22354-JLK, U.S. District Court Southern District of Florida, Miami Division (filed on 09/07/2007).

15. *Tracfone Wireless, Inc. v. Rayahi "Ray" Haifa, et al.*, Case No. 5:07-cv-01355-SGL-JCR, U.S. District Court Central District of California, Eastern Division (filed on 10/16/2007).
16. *Tracfone Wireless, Inc. v. Carson, et al.*, Case No. 3:07-cv-01761-G, U.S. District Court Northern District of Texas, Dallas Division (filed on 10/18/2007).
17. *Tracfone Wireless, Inc. v. Farshid Loochan, et al.*, Case No. 3:07-cv-01771-B, U.S. District Court Northern District of Texas, Dallas Division (filed on 10/22/2007).
18. *Tracfone Wireless, Inc. v. Rick W. Stone, Sr., et al.*, Case No. 3:07-cv-01770-M, U.S. District Court Northern District of Texas, Dallas Division (filed on 10/22/2007).
19. *Tracfone Wireless, Inc. v. GSM Group, Inc., et al.*, Case No. 1:07-cv-23166-JEM, U.S. District Court Southern District of Florida (filed on 12/05/2007).
20. *Tracfone Wireless, Inc. v. GCA Electronics, LLC, et al.*, Case No. 1:07-cv-03084-TCB, U.S. District Court Northern District of Georgia, Atlanta Division (filed on 12/12/2007).
21. *Tracfone Wireless, Inc. v. Platform Enterprises, et al.*, Case No. 8:07-cv-01460-SGL-MLG, U.S. District Court Central District of California Southern Division (filed on 12/20/2007).
22. *Tracfone Wireless, Inc. v. Miranda Holdings Corp.*, Case No. 1:07-cv-23348-MGC, U.S. District Court Southern District of Florida (filed on 12/21/2007).
23. *Tracfone Wireless, Inc. v. Skynet Wholesale Distributors, Inc., et al.*, Case No. 4:08-cv-00546, U.S. District Court Southern District of Texas, McAllen Division (filed on 02/18/2008).
24. *Tracfone Wireless, Inc. v. Kamlash Rami a/k/a Rani Kamlash, et al.*, Case No. 1:08-cv-00707-DLI-RLM, U.S. District Court Eastern District of New York (filed 02/20/2008).
25. *Tracfone Wireless, Inc. v. Wazir-Ali, et al.*, Case No. 4:08-cv-00641, U.S. District Court Southern District of Texas, Houston Division (filed on 02/26/2008).
26. *Tracfone Wireless, Inc. v. King Trading, Inc. d/b/a King Video, et al.*, Case No. 3:08-cv-0398-B, U.S. District Court Northern District of Texas, Dallas Division (filed on 03/07/2008).
27. *Tracfone Wireless, Inc. v. Haifa Food Corp., et al.*, Case No. 1:08-cv-20630-JEM, U.S. District Court Southern District of Florida (filed on 03/10/2008).
28. *Tracfone Wireless, Inc. v. California Products International Inc., et al.*, Case No. 2:08-cv-01877-SGL-SS, U.S. District Court Central District of California Western Division (filed on 03/20/2008).

29. *Tracfone Wireless, Inc. v. Miami Cell Co., et al.*, Case No. 1:08-cv-20933-JLK, U.S. District Court Southern District of Florida (filed 04/04/2008).
30. *Tracfone Wireless, Inc. v. Skycom Wireless, Inc., et al.*, Case No. 8:08-cv-00382-SGL-SS, U.S. District Court Central District of California, Western Division (filed on 04/09/2008).
31. *Tracfone Wireless, Inc. v. Delta Games, Inc., et al.*, Case No. 5:08-cv-00495-SGL-SS, U.S. District Court Central District of California, Eastern Division (filed on 04/10/2008).
32. *Tracfone Wireless, Inc. v. All Pro Distributing, Inc. et al.*, Case No. 1:08-cv-21245-FAM, U.S. District Court Southern District of Florida (filed on 04/28/2008).
33. *Tracfone Wireless, Inc. v. SP Trading Company, et al.*, Case No. 1:08-cv-21263-UU, U.S. District Court Southern District of Florida (filed on 04/30/2008).
34. *Tracfone Wireless, Inc. v. Verinet, Inc., et al.*, Case No. 7:08-cv-00137, U.S. District Court Southern District of Texas, McAllen Division (filed 05/02/2008).
35. *Tracfone Wireless, Inc. v. RSI, Inc. and Michael Steingold*, Case No. 1:08-cv-21793-MGC, U.S. District Court Southern District of Florida, Miami Division (filed 06/23/2008).
36. *Tracfone Wireless, Inc. v. C-Tech Wholesale, Inc., et al.*, Case No. 8:08-cv-00964-SGL-SS, U.S. District Court Central District of California Southern Division (filed on 08/26/2008).
37. *Tracfone Wireless, Inc. v. Rubina Tariq d/b/a Ruby Link, et al.*, Case No. 3:08-cv-01501-P, U.S. District Court Northern District of Texas, Dallas Division (filed 08/26/2008).
38. *Tracfone Wireless, Inc. v. NRA Group, Inc. et al.*, Case No. 3:08-cv-01501-P, U.S. District Court Northern District of Texas, Dallas Division (filed 08/26/2008).
39. *Tracfone Wireless, Inc. v. Blue Ocean's Distributing, LLC, et al.*, Case No. 1:09-cv-20386-UU, U.S. District Court Southern District of Florida (filed on 02/13/2009).
40. *Tracfone Wireless, Inc. v. Access Telecom, Inc.*, Case No. 1:09-cv-20397-ASG, U.S. District Court Southern District of Florida (filed on 02/17/2009).
41. *Tracfone Wireless, Inc. v. Wireless Cellutions.com, Inc., et al.*, Case No. 1:09-cv-20467-UU, U.S. District Court Southern District of Florida (filed on 02/24/2009).
42. *Tracfone Wireless, Inc. v. Gilmar Arantes, et al.*, Case No. 1:09-cv-20857-PAS, U.S. District Court Southern District of Florida (filed on 04/02/2009).
43. *Tracfone Wireless, Inc. v. Haider Khoja, et al.*, Case No. 3:09-cv-00619-N, U.S. District Court Northern District of Texas, Dallas Division (filed on 04/03/2009).

44. *Tracfone Wireless, Inc. v. Tropical Export, Inc. et al.*, Case No. 1:09-cv-21523-JLK, U.S. District Court Southern District of Florida, Miami Division (filed on 06/04/2009).
45. *Tracfone Wireless, Inc. v. Michigan Wireless Plus, Inc., et al.*, Case No. 1:09-cv-21530-JLK, U.S. District Court Southern District of Florida (filed on 06/05/2009).
46. *Tracfone Wireless, Inc. v. Rolando Ada, et al.*, Case No. 5:09-cv-00603-HE, U.S. District Court Western District of Oklahoma (filed on 06/08/2009).
47. *Tracfone Wireless, Inc. v. SNS Communications, Inc., et al.*, Case No. 1:09-cv-21571-PAS, U.S. District Court Southern District of Florida (filed on 06/09/2009).
48. *Tracfone Wireless, Inc. v. Jeffrey Stablein*, Case No. 1:09-cv-00157-SJM, U.S. District Court Western District of Pennsylvania (filed on 06/26/2009).
49. *Tracfone Wireless, Inc. v. Northeast Cellular, Inc.*, Case No. 2:09-cv-00847-JFC, U.S. District Court Western District of Pennsylvania (filed 06/26/2009).
50. *Tracfone Wireless, Inc. v. Advance CellTell Xess, LLC*, Case No. 6:09-cv-01514-MSS-KRS, U.S. District Court Middle District of Florida (filed on 09/03/2009).
51. *Tracfone Wireless, Inc. v. Idel Ravelo, Intel Wireless Corp.*, Case No. 1:09-cv-22774-DLG, U.S. District Court Southern District of Florida (filed on 09/15/2009).
52. *Tracfone Wireless, Inc. v. Paramount Imports, Inc. et al.*, Case No. 3:09-cv-01734-K, U.S. District Court Northern District of Texas, Dallas Division (filed 09/17/2009).
53. *WSA Distributing, Inc. v. Tracfone Wireless, Inc.*, Case No. 3:09-cv-02044, U.S. District Court Southern District of California (filed on 09/18/2009).
54. *Tracfone Wireless, Inc. v. We Sell Cellular, Inc., et al.*, Case No. 1:09-cv-08174-RMB, U.S. District Court Southern District of New York (filed on 9/25/2009).
55. *Tracfone Wireless, Inc. v. Galaxy Global Development, Ltd., et al.*, Case No. 3:09-cv-01943, U.S. District Court Northern District of Texas, Dallas Division (filed on 10/14/2009).
56. *Tracfone Wireless, Inc. v. Maxcom Telecommunications, S.A.B DE C.V. d/b/a Maxcom Telecommunications, Inc. et al.*, Case No. 1:09-cv-23103-PCH U.S. District Court Southern District of Florida (filed on 10/15/2009).
57. *Tracfone Wireless, Inc. v. Halim Barrera, et al.*, Case No. 1:09-cv-23142-PCH, U.S. District Court Southern District of Florida (filed 10/19/2009).
58. *Tracfone Wireless, Inc. v. Noor Traders*, Case No. 3:09-cv-05287-JCS, U.S. District Court Northern District of California, San Francisco Division (filed 11/06/2009).

59. *Tracfone Wireless, Inc. v. National Wireless Wholesale, Inc.*, Case No. 3:09-cv-01164-MMH-TEM, U.S. District Court Middle District of Florida, Jacksonville Division (filed 12/01/2009).
60. *Tracfone Wireless, Inc. v. Cellnet 7, Inc., et al.*, Case No. 1:09-cv-23670-JLK, U.S. District Court Southern District of Florida (filed on 12/09/2009)
61. *Tracfone Wireless, Inc. v. Duckcross Trading Corp.*, Case No. 1:10-cv-20412-PCH, U.S. District Court Southern District of Florida, Miami Division (filed on 02/09/2010).
62. *Tracfone Wireless, Inc. v. Amistar (Latino America), Inc. et al.*, Case No. 1:10-cv-20514-FAM, U.S. District Court Southern District of Florida (filed on 02/19/2010).
63. *Tracfone Wireless, Inc. v. Danacell International Inc.*, Case No. 1:10-cv-20516-AJ, U.S. District Court Southern District of Florida (filed on 02/19/2010).
64. *Tracfone Wireless, Inc. v. Jackson Wireless, Inc.*, Case No. 1:10-cv-20519-ASG, U.S. District Court Southern District of Florida (filed on 02/19/2010).
65. *Tracfone Wireless, Inc. v. Rizwan Memon*, Case No. 1:10-cv-20522-MGC, U.S. District Court Southern District of Florida (filed on 02/19/2010).
66. *Tracfone Wireless, Inc. v. SND Cellular, Inc. a/k/a S&D Cellular, Inc.*, Case No. 1:10-cv-20525-DLG, U.S. District Court Southern District of Florida (filed on 02/19/2010).
67. *Tracfone Wireless, Inc. v. Sunstrike International, Ltd.*, Case No. 1:10-cv-24386-JEM, U.S. District Court Southern District of Florida (filed on 12/09/2010).
68. *Tracfone Wireless, Inc. v. Commercel Comercializadora De Celulares, S.A. de C.V.*, Case No. 1:11-cv-20562-UU, U.S. District Court Southern District of Florida (filed 02/18/2011).
69. *Tracfone Wireless, Inc. v. Wireless Exclusive USA, LLC, et al.*, Case No. 3:08-cv-0628-G, U.S. District Court Northern District of Texas, Dallas Division (filed on 04/11/2011).
70. *Tracfone Wireless, Inc. v. Brandon Belcher, et al.*, Case No. 1:11-cv-21544-FAM, U.S. District Court Southern District of Florida (filed on 05/03/2011).
71. *Tracfone Wireless, Inc. v. Bitton, et al.*, Case No. 1:11-cv-21871-RNS, U.S. District Court Southern District of Florida (filed on 05/23/2011).
72. *Tracfone Wireless, Inc. v. Caberera, Jr.*, Case No. 1:12-cv-20768-JAL, U.S. District Court Southern District of Florida (filed on 02/23/2012).

**Exhibit 2: Representative Examples of Unlocked Devices Available to Consumers**



Shop by Department

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Cell Phones & Accessories Contract Phones No-Contract Phones Unlocked Phones Accessories Cases Wearable Technology Best Sellers Deals

Cell Phones & Accessories > Cell Phones > Unlocked Cell Phones



Roll over image to zoom in

### Apple iPhone 5s, Gold 16GB (Unlocked)

by Apple

1,138 customer reviews

576 answered questions

List Price: \$649.99

Price: **\$555.00 & FREE SHIPPING**

You Save: **\$94.99 (15%)**

**Note:** Not eligible for Amazon Prime. Available with free Prime shipping from other sellers on Amazon.

**Only 11 left in stock.**

Ships from and sold by Tech Trend. Gift-wrap available.

**Estimated Delivery Date:** Wednesday, Feb. 25 when you choose Two-Day Shipping at checkout.

Size: **16 GB**

16 GB 32 GB 64 GB

Color: **Gold**



- 4.0-inch Retina display
- A7 chip with M7 motion coprocessor
- Touch ID fingerprint sensor
- 8MP iSight camera with True Tone flash and 1080p HD video recording
- Unlocked cell phones are compatible with GSM carriers like AT&T and T-Mobile as well as with GSM SIM cards (e.g. H20 and select prepaid carriers). Unlocked cell phones will not work with CDMA Carriers like Sprint, Verizon, Boost or Virgin.

53 new from \$519.95 74 used from \$360.00

7 refurbished from \$375.99

There is a newer model of this item:



Apple iPhone 6, Gold, 16 GB (Unlocked)

\$715.00

(302)

In stock on February 25, 2015.



#### Amazon Refurbished Pre-Owned iPhones

Check out iPhones shipped and sold by Amazon Warehouse Deals. All iPhones pass a 20-point quality check and come with the latest iOS, new headphones, and a 30-day return policy. [Learn more](#)

Share

Buy new: \$555.00

Qty: 1

\$555.00 + Free Shipping  
In Stock. Sold by Tech Trend

Add to Cart

Turn on 1-Click ordering

Buy used: \$431.75

Add to Wish List

#### Sell yours for a Gift Card

We'll buy it for up to \$246.05

[Learn More](#)

Trade in now

#### Other Sellers on Amazon

\$544.44

+ \$4.99 shipping

Sold by: Tech Addicts

Add to Cart

\$547.99

+ \$4.98 shipping

Sold by: Arad System

Add to Cart

\$549.95

+ \$4.72 shipping

Sold by: Affordable-Electronics

Add to Cart

134 used & new from \$360.00

Have one to sell?

Sell on Amazon

#### Frequently Bought Together

Price for all three: **\$567.98**

Shop by Department

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Cell Phones & Accessories > Cell Phones > Unlocked Cell Phones



Roll over image to zoom in

### Samsung Galaxy S5 SM-G900H 16GB Factory Unlocked International Version - WHITE

by Samsung

540 customer reviews

588 answered questions

List Price: \$799.99

Price: \$473.80

You Save: \$326.19 (41%)

Note: Available at a lower price from other sellers, potentially without free Prime shipping.

In Stock.

Sold by Mobile Best Sellers and Fulfilled by Amazon.

Gift-wrap available.

Want it Tuesday, Feb. 24? Order within 20 hrs 45 mins and choose One-Day Shipping at checkout. Details

Color: White

- 5.1" Full HD Super AMOLED? (1080 x 1920)
- Exyon Quad Core; 1.9GHz,1.3GHz
- 16 MP Camera with LED Flash
- Must be activated with an Americas-region SIM
- 16GB of Internal Memory

23 new from \$473.28 27 used from \$413.99

19 refurbished from \$419.99



#### The Samsung Store

Check out Samsung's large selection of products. Shop now

Share

Qty: 1

Add to Cart

Turn on 1-Click ordering

Add to Wish List

#### Sell yours for a Gift Card

We'll buy it for up to \$254.07

Learn More

Trade in now

#### Other Sellers on Amazon

\$473.28

Add to Cart

Sold by: Straight Trading, Inc.

\$473.29

Add to Cart

Sold by: BLUTEKUSA

\$473.29

Add to Cart

Sold by: DeltaMobiles

69 used & new from \$413.99

Have one to sell?

Sell on Amazon

#### Sponsored by BLU Products



BLU Vivo Air Smartphone - Unlocked - White Gold (99)

\$199.00

Ad feedback

#### Frequently Bought Together



Price for all three: \$500.01

Add all three to Cart

Add all three to Wish List

Show availability and shipping details

- This item: Samsung Galaxy S5 SM-G900H 16GB Factory Unlocked International Version - WHITE \$473.80
- Galaxy S5 Screen Protector, Spigen® [Full HD] Samsung Galaxy S5 Screen Protector [Crystal ... \$7.99
- Galaxy S5 Case, Spigen Slim Armor Case for Galaxy S5 - Shimmery White (SGP10755) \$18.22

#### Customers Who Bought This Item Also Bought





Roll over image to zoom in

## Samsung Galaxy S4 GT-I9500 Factory Unlocked Phone, White

by Samsung

713 customer reviews

| 792 answered questions

List Price: ~~\$700.00~~

Price: **\$359.99** & **FREE SHIPPING**

You Save: **\$340.01 (49%)**

**Note:** Not eligible for Amazon Prime. Available with free Prime shipping from [other sellers on Amazon](#).

**Only 5 left in stock.**

Ships from and sold by [WorldWide Distributors](#).

**Estimated Delivery Date:** Feb. 24 - 27 when you choose Expedited at checkout.

- **DISPLAY:** Super AMOLED capacitive touchscreen, 16M colors, 1080 x 1920 pixels, 5.0 inches (~441 ppi pixel density), Corning Gorilla Glass 3, TouchWiz UI
- **CAMERA:** 13 MP, 4128 x 3096 pixels, autofocus, LED flash (Primary), 2 MP, 1080p@30fps, dual video call (Secondary), Dual Shot, Simultaneous HD video and image recording, geo-tagging, touch focus, face and smile detection, image stabilization, HDR, 1080p@30fps, dual-video
- **OS:** Android OS, v4.2.2 (Jelly Bean)
- **CPU:** Quad-core 1.6 GHz Cortex-A15 & quad-core 1.2 GHz Cortex-A7
- **GPU:** PowerVR SGX 544MP3

11 new from **\$355.00** 31 used from **\$223.95**

9 refurbished from **\$259.90**

Share

**Buy new:** **\$359.99**

Qty:

**\$359.99** + Free Shipping  
In Stock. Sold by **WorldWide Distributors**

Add to Cart

Turn on 1-Click ordering

**Buy used:** **\$284.94**

Add to Wish List

### Sell yours for a Gift Card

We'll buy it for up to **\$125.55**

[Learn More](#)

Trade in now

### Other Sellers on Amazon

**\$355.00**

+ \$4.99 shipping

Sold by: Cell2U4Less

Add to Cart

**\$368.99**

+ Free Shipping

Sold by: FGS Trading

Add to Cart

**\$369.99**

+ Free Shipping

Sold by: BREED

Add to Cart

51 used & new from **\$223.95**

Have one to sell?

Sell on Amazon

### Sponsored by BLU Products



BLU Vivo Air Smartphone - Unlocked - White Gold (99)

**\$199.00**

[Ad feedback](#)

### Frequently Bought Together



Price for both: **\$360.98**

Add both to Cart

Add both to Wish List

These items are shipped from and sold by different sellers. [Show details](#)

- This item:** Samsung Galaxy S4 GT-I9500 Factory Unlocked Phone, White **\$359.99**
- [MPERO Collection 5 Pack of Clear Screen Protectors for Samsung Galaxy S4 / S IV](#) **\$0.99**

### Customers Who Bought This Item Also Bought



MPERO Collection 5 Pack of Clear Screen Protectors for Samsung Galaxy S4 / S IV

**\$0.99**

2,464



Samsung Galaxy S3 Mini GT-i8200 Factory Unlocked International Version - WHITE

**\$132.77**

1,327



Samsung Galaxy S4 Flip Cover Folio Case (Light Blue)

**\$3.32**

1,643



BLU Advance 4.0 Unlocked Dual SIM Phone (White)

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Cell Phones & Accessories > Cell Phones > Unlocked Cell Phones



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### Samsung Galaxy Note 3 III SM-N900 Factory Unlocked International Version 32GB BLACK

by Samsung

393 customer reviews

446 answered questions

List Price: \$999.00

Price: \$527.90

You Save: \$471.10 (47%)

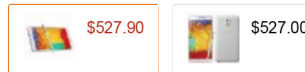
Note: Available at a lower price from other sellers, potentially without free Prime shipping.

Only 4 left in stock.

Sold by TechnoMaster and Fulfilled by Amazon. Gift-wrap available.

Want it Tuesday, Feb. 24? Order within 18 hrs 43 mins and choose One-Day Shipping at checkout. Details

Color: Black



- CPU: 1.9 GHz Cortex-A15 & quad-core 1.3 GHz Cortex-A7 (3G model)
- 3G: HSDPA 850 / 900 / 1900 / 2100
- AMOLED Display: 1080 x 1920 pixels, 5.7 inches (~386 ppi pixel density)
- Camera: 13 MP, 4128 x 3096 pixels, autofocus, LED flash
- Internal Memory: 32GB storage, 3 GB RAM

3 new from \$527.89 25 used from \$332.00 8 refurbished from \$368.00

Share

Buy new: \$527.90

Qty: 1

Add to Cart

Turn on 1-Click ordering

Buy used: \$339.95

Add to Wish List

Sell yours for a Gift Card

We'll buy it for up to \$190.44

Learn More

Trade in now

Other Sellers on Amazon

\$527.89

Add to Cart

Sold by: SHOPEBEST.

36 used & new from \$332.00

Have one to sell?

Sell on Amazon

Sponsored by Urban Armor Gear



URBAN ARMOR GEAR Case for Galaxy Note III, ...

(863)

\$34.95 \$26.32

Ad feedback

#### Frequently Bought Together



Price for all three: \$544.84

Add all three to Cart

Add all three to Wish List

Show availability and shipping details

- This item: Samsung Galaxy Note 3 III SM-N900 Factory Unlocked International Version 32GB BLACK \$527.90
- Tech Armor Samsung Galaxy Note 3 High Definition (HD) Clear Screen Protectors - Maximum Clarity and ... \$6.95
- Galaxy Note 3 Case, Spigen® [Non-Slip] Samsung Galaxy Note 3 Case Slim [Ultra Fit] [Smooth Black] ... \$9.99

#### Customers Who Bought This Item Also Bought



Galaxy Note 3 Case, Spigen® [Non-Slip]



Tech Armor Samsung Galaxy Note 3 High Definition (HD) Clear Screen Protectors - Maximum Clarity and ...



SAKO Black Advanced Armor Hard Hybrid Case



Samsung Galaxy Note 3 Case S View Flip Cover



Samsung Galaxy Note 3 Neo N7505 16GB



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# Apple iPhone 5c, White 16GB (Unlocked)

by Apple

517 customer reviews

218 answered questions

List Price: \$649.99  
Price: **\$439.98**  
You Save: **\$210.01 (32%)**

**Note:** Available at a lower price from other sellers, potentially without free Prime shipping.

**In Stock.**

Sold by [TheBestInClass](#) and [Fulfilled by Amazon](#). Gift-wrap available.

**Want it Tuesday, Feb. 24?** Order within **6 hrs 41 mins** and choose **Two-Day Shipping** at checkout. [Details](#)

Size: **16 GB**

16 GB 32 GB

Color: **White**



- 4-inch Retina display
- A6 chip
- 8MP iSight camera and 1080p HD video recording
- FaceTime HD camera
- Unlocked cell phones are compatible with GSM carriers like AT&T and T-Mobile as well as with GSM SIM cards (e.g. H20 and select prepaid carriers). Unlocked cell phones will not work with CDMA Carriers like Sprint, Verizon, Boost or Virgin.

24 new from \$389.99 32 used from \$218.99  
10 refurbished from \$227.99



## Amazon Refurbished Pre-Owned iPhones

Check out iPhones shipped and sold by Amazon Warehouse Deals. All iPhones pass a 20-point quality check and come with the latest iOS, new headphones, and a 30-day return policy. [Learn more](#)

Share

Buy new: **\$439.98**

Qty: 1

Add to Cart

[Turn on 1-Click ordering](#)

Buy used: **\$222.99**

Add to Wish List

### Sell yours for a Gift Card

We'll buy it for up to **\$112.56**

[Learn More](#)

Trade in now

### Other Sellers on Amazon

**\$414.55**

+ \$4.84 shipping

Sold by: AllStar Electronics

Add to Cart

**\$485.00**

+ Free Shipping

Sold by: HeavyDuty Electronics

Add to Cart

66 used & new from **\$218.99**

Have one to sell?

[Sell on Amazon](#)

### Sponsored by BLU Products



**BLU Vivo Air Smartphone - Unlocked - White Gold (99)**

**\$199.00**

[Ad feedback](#)

## Frequently Bought Together



Price for both: **\$440.97**

Add both to Cart

Add both to Wish List

These items are shipped from and sold by different sellers. [Show details](#)

**This item:** Apple iPhone 5c, White 16GB (Unlocked) **\$439.98**

**MPERO 5 Pack of Ultra Clear Screen Protectors for Apple iPhone 5 / 5S / 5C \$0.99**



Roll over image to zoom in

# Apple iPhone 4S 16GB Black - FACTORY UNLOCKED

by [Apple](#)

[488 customer reviews](#)

| [249 answered questions](#)

Price: **\$228.99**

**Only 6 left in stock.**

Sold by [Barnyard Wireless](#) and [Fulfilled by Amazon](#).  
Gift-wrap available.

**Want it Tuesday, Feb. 24?** Order within **19 hrs 39 mins** and choose **One-Day Shipping** at checkout. [Details](#)

- This follow-up to the very popular iPhone 4 features a faster Apple A5 dual-core processor and better 8 megapixel camera
- The iPhone 4S also features Siri - a voice assistant heading natural-language questions and commands, and taking dictation
- Other features include a gorgeous 3.5-inch high-resolution display, iPod music player, Wi-Fi, and 16GB of internal memory
- The Apple iPhone 4S also comes equipped with GSM, CDMA, and WCDMA modes for international use
- This product has been carefully audited and is certified to be 100% functional.

[46 new](#) from **\$214.00**   [96 used](#) from **\$110.00**  
[19 refurbished](#) from **\$124.99**



### Amazon Refurbished Pre-Owned iPhones

Check out iPhones shipped and sold by Amazon Warehouse Deals. All iPhones pass a 20-point quality check and come with the latest iOS, new headphones, and a 30-day return policy. [Learn more](#)

[Share](#)

**Buy new:** **\$228.99**

Qty:

[Add to Cart](#)

[Turn on 1-Click ordering](#)

**Buy used:** **\$134.95**

[Add to Wish List](#)

### Sell yours for a Gift Card

We'll buy it for up to **\$63.05**

[Learn More](#)

[Trade in now](#)

### Other Sellers on Amazon

**\$230.00**

+ \$4.49 shipping

Sold by: [WirelessCloseouts](#)

[Add to Cart](#)

**\$236.00**

+ \$4.57 shipping

Sold by: [WorldofElectronics](#)

[Add to Cart](#)

**\$241.95**

Sold by: [Cellphone Zone](#)

[Add to Cart](#)

[161 used & new](#) from **\$110.00**

Have one to sell?

[Sell on Amazon](#)

### Sponsored by BLU Products



**5000 mAH Super Battery - Also used as a powerbank (26)**

**\$149.00**

[Ad feedback](#)

### Frequently Bought Together



**Price for all three: \$232.85**

[Add all three to Cart](#)

[Add all three to Wish List](#)

These items are shipped from and sold by different sellers. [Show details](#)

- This item:** Apple iPhone 4S 16GB Black - FACTORY UNLOCKED **\$228.99**
- iPhone 4 / 4S Anti-Glare, Anti-Scratch, Anti-Fingerprint - Matte Finishing Screen Protector **\$1.26**
- DELUXE BLACK CASE COVER W/CHROME FOR IPHONE 4 4G 4S AT&T VERIZON SPRINT **\$2.60**

### Customers Who Bought This Item Also Bought



**DELUXE BLACK CASE COVER W/CHROME FOR IPHONE 4 4G 4S AT&T VERIZON SPRINT**



**iPhone 4 / 4S Anti-Glare, Anti-Scratch, Anti-Fingerprint...**  
8,147



**Apple iPhone 4S 16GB White - Unlocked**  
565  
**\$239.95**



**Premium Chrome Aluminum Skin Hard Back Case Cover for Apple iPhone 4 4G 4S Silver**



**Leegoal(TM) Black Luxury Steel Aluminum Chrome Hard Back Case Cover**  
579



Click to open expanded view

## Samsung Galaxy S4 Mini GT-I9192 GSM Factory Unlocked Dual Sim - White 8GB

by Samsung Korea

1,730 customer reviews

| 984 answered questions

List Price: ~~\$399.99~~

Price: **\$219.98**

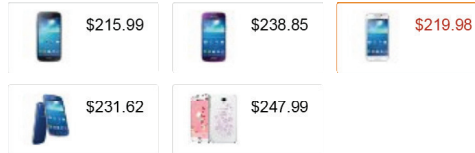
You Save: **\$180.01 (45%)**

**Note:** Available at a lower price from [other sellers](#), potentially without free Prime shipping.

**Only 2 left in stock.**

Sold by [DeltaMobiles](#) and [Fulfilled by Amazon](#). Gift-wrap available.

Color: **White**



- Cellular Band - Quad-Band 850 / 900 / 1800 / 1900 Mhz
- Cellular Band 3G - 850 / 1900 / 2100 Mhz
- Android 4.2.2 Jelly Bean
- 4.3" Super AMOLED touchscreen; delivers highly-vivid imagery on a responsive touchscreen
- Dual-core 1.7 GHz Krait; runs applications and multimedia features seamlessly

26 new from **\$212.17** 10 used from **\$198.60**  
4 refurbished from **\$204.95**

Share

Qty:

Add to Cart

[Turn on 1-Click ordering](#)

Add to Wish List

**Sell yours for a Gift Card**

We'll buy it for up to **\$99.00**

[Learn More](#)

Trade in now

### Other Sellers on Amazon

**\$216.99**

+ Free Shipping

Sold by: WorldWide Distributors

**\$216.99**

+ Free Shipping

Sold by: FGS Trading

**\$221.31**

Sold by: Amazon.com

40 used & new from **\$198.60**

Have one to sell?

### Frequently Bought Together



Price for both: **\$229.88**

[Show availability and shipping details](#)

**This item:** Samsung Galaxy S4 Mini GT-I9192 GSM Factory Unlocked Dual Sim - White 8GB **\$219.98**

PThink® Ultra-thin Tempered Glass Screen Protector for Samsung Galaxy S4 Mini with 9H ... **\$9.90**

### Customers Who Bought This Item Also Bought



MPERO Collection 5 Pack of Clear Screen Protectors for Samsung Galaxy S4 Mini

642

**\$1.49**



PThink® Ultra-thin Tempered Glass Screen Protector for Samsung Galaxy S4 Mini with...

581

**\$9.90**



Samsung Galaxy S3 Mini GT-i8200 Factory Unlocked International Version - WHITE

1,327

**\$132.77**



Kingston 8 GB microSDHC Class 4 Flash Memory Card SDC4/8GBET

7,366

**\$4.99**



S4 Mini Case, Galaxy S4 Mini Case, Speedtek Bowknot Pattern Premium PU Leather Wallet...

86

**\$8.99**



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Cell Phones & Accessories > Cell Phones > Unlocked Cell Phones



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### msung Korea Samsung Galaxy and II Duos G7102 White tory Unlocked Android Phone - locked Cell Phones - Retail ckaging - White

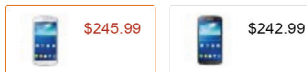
amsung Korea 94 customer reviews answered questions

Price: \$349.99 Price: \$245.99 Save: \$104.00 (30%)

: Available at a lower price from other sellers, ntially without free Prime shipping.

y 3 left in stock. by SHOPEBEST. and Fulfilled by Amazon. Gift-wrap able.

t it Tuesday, Feb. 24? Order within 6 hrs 31 mins choose Two-Day Shipping at checkout. Details r: White



- Cellular Band - Quad-Band 850 / 900 / 1800 / 1900 hz
- Cellular Band 3G - 850 / 1900 / 2100 Mhz
- Android OS, v4.3 (Jelly Bean), upgradable to v4.4.2 (KitKat)

7 new from \$235.99

Share

Qty: 1

Add to Cart

Turn on 1-Click ordering

Add to Wish List

#### Other Sellers on Amazon

\$235.99 Add to Cart

+ Free Shipping Sold by: BEST PRICE MOBILE

\$240.68 Add to Cart

Sold by: Amazon.com

\$242.00 Add to Cart

+ \$4.99 shipping Sold by: Voltage Converter Store

7 new from \$235.99

Have one to sell? Sell on Amazon

#### Sponsored by BUDDIBOX



BUDDIBOX Phone Case for Samsung Galaxy S5 (576)

\$15.89 \$11.95

Ad feedback

### Frequently Bought Together



Price for both: \$254.48

Add both to Cart

Add both to Wish List

Show availability and shipping details

This item: Samsung Korea Samsung Galaxy Grand II Duos G7102 White Factory Unlocked Android Phone - Unlocked Cell ... \$245.99

Arbalest® for Samsung Galaxy Grand 2 G7102 Brushed Texture PU Leather Flip Cover Case with Window View ... \$8.49

### Customers Who Bought This Item Also Bought



Arbalest® for Samsung Galaxy Grand 2 G7102 Brushed Texture PU



Arbalest® for Samsung Galaxy Grand 2 G7102 Brushed Texture PU



Arbalest® for Samsung Galaxy Grand 2 G7102 Hybrid Hard Back Cover



Arbalest® Slim Fit S Line Wave Flexible TPU Case Cover for Samsung Galaxy



(3-Pack) EZGuardZ Screen Protector for Samsung Galaxy Grand 2 Duos