

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

### Item 1. Commenter Information

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**Date:** May 1, 2015

### Item 2. Proposed Class Addressed

**Proposed Class 14: Unlocking – *wearable computer devices.***

### Item 3. Interest and Views of eBay

eBay provides a leading resale marketplace for connected devices, including wearable computer devices. In initial comments supporting a Class 11 exemption filed jointly with Gazelle (“e-Bay Class 11 Comments”) eBay provided a Declaration by Vice President and Deputy General Counsel Tod Cohen that stated: “With 155 million active buyers globally, eBay is one of the world’s largest online marketplaces, where practically anyone can buy and sell practically anything. Founded in 1995, eBay connects a diverse and passionate community of individual buyers and sellers, as well as small businesses. Their collective impact on ecommerce is staggering, and more than 700 million items are listed on eBay.”<sup>1</sup>

Sales of smart watches by eBay sellers are expected to significantly increase in 2015. Such wearable devices are often “locked” to a specific carrier network. Unlocked devices, however, have more versatility, leading to higher values in the resale market. Trade in these devices on eBay therefore would be enhanced if the Register recommends the “wearables” unlocking exemption petitioned for by the Competitive Carriers Association (“CCA”). This is particularly true for used smart watches, due to the greater likelihood that their owners will have satisfied contractual obligations to their original carriers. Used smart watches comprised 25 percent of smart watches sold in the U.S. through eBay last year.

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<sup>1</sup> eBay Class 11 Comments at 11.

eBay believes and asserts that the policy arguments made in its Class 11 comments are equally compelling in the context of the unlocking of consumer wearable devices on a bulk basis, by a legitimate reseller that has lawfully acquired the device for resale.

#### The Proponents Have Met Their Burden

CCA has adduced evidence, not contradicted by any opposing comment, that a marketplace is emerging for wearable devices that use “integrated mobile phone technology” tied to a network, rather than relying solely on Wi-Fi connectivity, and that such devices can be network-locked. A consumer purchasing such a device, now or in the next two years, is likely to satisfy her obligations to a specific carrier and wish to unlock the device (or have it unlocked for her by a reseller) to realize its full value on the used-device market. eBay can attest to the accuracy of CCA’s statement, re Adverse Effects, that devices are less valuable in the legitimate resale market if they cannot be unlocked.

No objection has been filed to the petitions for wearable-device exemptions (and supporting evidence) made by CCA and the Rural Wireless Association. In the absence of any such opposition, The Register should determine that there would be no adverse effect from CCA’s proposed exemption and should grant it as formulated.