

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

Item 1. Commenter Information

My name is Kevin Chen and I am a software developer with extensive experience in iOS app development, firmware, and robotics. My contact information, including email address, is available at <<http://kevinchen.co/>>.

Item 2. Proposed Class Addressed

Proposed Class 16: “Jailbreaking—Wireless Telephone Handsets”

Item 3. Statement Regarding Proposed Exemption

This is a response to BSA’s long comment on Proposed Class 16. I am writing in support of the exemption.

In the BSA’s comment, they assert that the proposal should be rejected because jailbreaking mobile phones is detrimental to the mobile platforms’ security and trustworthiness. This statement is very obviously false, for two reasons.

First, the software bugs discovered by jailbreak developers help companies improve the security of their software. Briefly browsing through Apple’s own history of exploits should be enough to demonstrate this: since the release of iOS, **dozens if not hundreds of critical security flaws were fixed through the work of jailbreak developers.**¹ These security improvements benefit all iOS users—even if they do not jailbreak their their phones. In addition, jailbreak developers are some of the best security researchers in the world, and take a lot of pride in their work. Those who follow jailbreak development know that there is intense competition among different jailbreak teams to be the first to find a bug. Through jailbreaking, **companies are receiving for free the work of highly motivated, world-class security researchers.** Jailbreak development has unquestionably improved the security of mobile phone platforms.

Second, as BSA states in its own filing, “Apple ignited the app revolution with the launch of the App Store in 2008. Since then, an entire industry has been built around app design and development.” Jailbreaking on iPhone OS version 1 was available to users and third-party developers several months before the App Store was even announced. Since then, **millions of iOS devices have been jailbroken**—for example, the evasi0n jailbreak, which was only available for certain devices running iOS 6, was used to jailbreak over 1.7 million devices.² And there has been no detrimental effect on the profitability of app developers like me, or

¹ <https://support.apple.com/en-us/HT201222>

² <http://www.iphonhacks.com/2013/02/evasi0n-jailbreak-statistics.html>

on the innovation and variety of apps. Consumers do not view the iPhone platform as insecure: each new iPhone sets a higher and higher record for opening weekend sales, the most recent being 10 million units.³ **Jailbreaking has been available throughout the lifetime of the App Store, and there have been no detrimental effects** to mobile phone manufacturers, customers, or app developers.

BSA also asserts that consumers have a wide variety of choice in buying mobile phones that do not come with restrictions, usually Android phones. But as they note in their own filing, it is up to each manufacturer to decide when and how they want to lift these restrictions. Customers' ability to run legally purchased software on legally purchased hardware **should not be dependent on the *de facto* practices of Android manufacturers.** It is possible for HTC and Motorola to change their mind in the future and follow in the footsteps of Apple by locking down their mobile phones. Without a copyright exemption, this would leave users with no legal way to install the software they want to use.

³ <http://www.macstories.net/news/as-opening-weekend-iphone-6-and-iphone-6-plus-sales-top-10-million-we-look-back-at-previous-iphone-launches/>