

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

Item 1. Commenter Information

This is a comment by Michael Horton.

Item 2. Proposed Class Addressed

Proposed Class 19: Jailbreaking – video game consoles

Item 3. Statement Regarding Proposed Exemption

I support a copyright exemption for jailbreaking video game consoles for several reasons. First, it would end discrimination by hardware manufacturers against consumers who jailbreak their consoles. Unlike mobile devices, where jailbreakers can legally purchase software from the online stores and access purchased applications freely, jailbroken consoles running custom firmware (CFW) are often locked out of the stores and risk being banned from online gaming accounts. This forces consumers to either buy redundant hardware or turn to piracy to make full use of their hardware.

Second, jailbreaking consoles helps further game preservation. In an era where games can only exist in digital form and all game updates are purely digital, console jailbreaking is literally the only way to preserve a game if it is removed from sale, which typically occurs due to licensing issues. Even if a game is not removed from sale, a jailbroken console may be needed to extract BIOS, downloadable content (DLC), and updates to ensure full preservation and proper emulation on other systems.

Third, jailbreaking consoles enhances the functionality of the hardware. For example, jailbroken PlayStation 2s (PS2s) can use USB flash drives for storage of game saves and games, features that Sony could have enabled, but never did. Likewise, many jailbroken consoles and handhelds support a wide range of emulators and software that increase the value and utility of the hardware at little to no extra cost by providing services the manufacturer would never provide.

Fourth and finally, CFW provides competition to official firmware, incentive to improve the product, and consumer protection against console design decisions aimed at extracting exorbitant payments for basic functionality. For example, Sony's PlayStation TV (PS TV) console, much like the PS2, has USB ports, but forces consumers to buy proprietary memory cards that are roughly twice the price of equivalent USB flash or SD card memory. If a PS TV CFW existed, such functionality might be enabled, saving consumers money and protecting them from Sony's memory monopoly. Also, a PS TV CFW would enable the use of free emulators that outperform Sony's own emulators. Without a copyright exemption for jailbreaking consoles, Sony could crush any efforts to develop CFW under the pretense of protecting its IP and consumers, instead of improving its own firmware and software. For example, the Amazon Fire TV, a multimedia device/game console, recently added USB storage support to its operating system due to demand and widespread jailbreaking for that feature. As a result, jailbreaking gives consumers another way to motivate console manufacturers to improve their consoles in beneficial ways.

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