

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

### **Commenter Information**

Jay Freeman  
SaurikIT, LLC  
(805) 895-7209  
8605 Santa Monica Boulevard #21162  
West Hollywood, CA 90069

### **Proposed Class Addressed**

Proposed Class 6: Computer Programs — jailbreaking

### **Supporting Response Argument**

I am sorry that this "long" comment is so short, but the "against" comments this year are themselves quite simple, and it is relatively easy to respond to each one of them directly.

### **App Association Response**

The against comment filed by the App Association hinges on an example: the "piracy" of an app called Zoo Train. However, the example does not involve jailbreaking: it involves a similar app—using the same name and the same artwork, legitimately violating both trademark law and existing copyright law—that was officially published in the Google Play Store. This was almost certainly constructed without the usage of jailbroken devices and does not require a jailbroken device to download and use; the harm expressed by the App Association has nothing to do with jailbreaking, and would occur regardless.

### **Entertainment Software Association Response**

The against comment filed by the Entertainment Software Association they argue that video game consoles should not get an exemption... only, the EFF seems to have never intended for its exemption class to cover video game consoles, and abandoned a petition that it had filed which looked like it might accidentally include video game consoles. The ESA actually admits this in their own comment, saying that "it seems clear that, at this time, EFF does not seek to extend the existing mobile phone jailbreaking exemption to video game consoles". This entire argument thereby has nothing to do with the proposed class.

### **Joint Creators and Copyright Owners Response**

Finally, the Joint Creators and Copyright Owners makes a six-part argument. The first part argues against an abandoned petition and the second part is sufficiently procedural that I am unable to comment (whether to accept a petition is up to the ruling of the Library of Congress).

The third part is an argument of semantics; one which, if accepted, frankly calls into question the entire concept of defining exemption classes. They claim that "voice assistants" is overly broad, but for the same reason that "voice assistants" is overly broad (that this could apply to almost any device), so too would the classic "mobile telecommunications handset" or the new "smartphone": we are living in a world where every single device does every single thing; they can receive and make phone calls, take pictures, and respond to voice commands. However, we all know what a "voice assistant" is in the same way that we all know what a smartphone is.

The fourth part is simply stating that "voice assistants are rapidly becoming an important platform through which consumers enjoy expressive works, including music, literary works, and audiovisual works". However, this is already true of "smartphones", for which we already have an exemption, and is definitely true of the existing class of "portable all-purpose mobile computing devices"; I would be surprised if anyone stated that, through the 2010s, the iPhone and iPad were not one of the most important platforms "through which consumers enjoy expressive works, including music, literary works, and audiovisual works". If this were not the case no one would care to obtain an exemption for these devices: they would be irrelevant.

The fifth part argues that doing this would allow access to copyrighted works... but if that were not the case then there would be no need for an exemption. This argument is non-sensical.

The final part claims that there is "significant competition" in voice assistants. However, this ignores key aspects of the entire reason why people jailbreak as defined by this class: to obtain interesting new software. The only way to get interesting software is if there is a large market for that software, which means that niche devices are not relevant. The reality is that over 95% of this market is controlled by only two devices: Amazon Alexa and Google Home; and while available survey data did not look for this, one would imagine Apple HomePod to be a good amount of the remaining 5%. There is a clear oligopoly on these devices, with no reasonable alternative for users at all much less one that could support a market for alternative software.

## **Conclusion**

None of these arguments do not seem to constitute a legitimate response to the proposed class that demonstrates any form of reasonable harm for jailbreaking the expanded set of devices. At best, these arguments demonstrate how similar this class is to existing classes, and show that it almost seems strange that "voice assistants" would be excluded from this class. In fact, a "voice assistant" is nothing more than a "smartphone", developed by the same handful of companies who make smartphones and tablets, but without a phone or screen; excluding it due to semantics of "all-purpose" and "mobile" is absurd: let's expand this class.