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August 23, 2018

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VIA E-MAIL

**RE: Docket No. 2017-10, Summary of Ex Parte Meeting with
Copyright Office Staff Regarding Exemption to Prohibition Against
Circumvention of Technological Measures Protecting Copyrighted
Works – Class 6**

Dear Ms. Smith,

Thank you for speaking with us by phone on August 21, 2018. Kit Walsh and the undersigned were on the call for the Electronic Frontier Foundation. Kevin Amer, Anna Chauvet, and Nicholas Bartelt were present for the Copyright Office. This letter summarizes our discussion of Class 6, EFF's proposed expansion of the exemption for jailbreaking personal computing devices to include voice assistant devices.

We reiterated that voice assistant devices are similar in design and functionality to smartphones, tablets, and other personal computing devices for which an exemption is already in place and subject to renewal. In particular, they use similar operating systems and other software, and they are similarly marketed as multipurpose computing devices. We noted that the Motion Picture Association of America, *et al.*, did not object to renewal of the existing jailbreaking exemption. Moreover, MPAA's objections to an exemption for voice assistant devices did not include any evidence that the ability to jailbreak voice assistant devices presents a particularized risk of enabling copyright infringement. Rather, MPAA *et al.* theorized about convoluted ways that a determined person *could* extract copyrighted music from a voice assistant device, but did not present evidence that these were likely to occur in any significant amount if the exemption is granted. We pointed out that other opponents have raised the same argument, with a similarly weak evidentiary basis, with respect to smartphones in three previous rulemaking cycles, and the Register has nonetheless granted exemptions for jailbreaking smartphones continuously since 2010. Anecdotal evidence aside, the past eight years have demonstrated that the ability to jailbreak multipurpose computing devices does not significantly increase infringement, nor does it measurably decrease revenues for music, video, books, games, or software.

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We also discussed the importance of consumers' ability to modify software on general-purpose computing devices, including voice assistants. Given the diversity of functions that voice assistant devices are used for, device owners' reasons for adding and removing software are equally diverse. We pointed out that the lawful ability to add and remove software from one's own multipurpose device cannot turn on whether that device is used to access entertainment content, because such a criterion would imperil a wide range of lawful activities.

You asked about the types of TPMs that are used in connection with streaming media on voice assistant devices. We explained that voice assistants, like smartphones and other personal computing devices, often employ multiple TPMs, including account verification and activity pattern analysis on the server side, which are neither covered by the proposed exemption nor accessible to device owners. We further explained that streaming media such as music often employs TPMs that are distinct from the TPMs that control access to the device firmware (and thus are not covered by this proposed exemption). However, even in instances where the access controls on device firmware described in EFF's comments also confer additional control over access to entertainment content, the lawful ability to jailbreak should be preserved. Otherwise, rightsholders who supply device firmware (or control its design through contractual agreements and patent licenses with manufacturers) will effectively be able to take away device owners' ability to modify their own devices based on the specifics of firmware design.

You also asked whether streaming media content is ever available in unencrypted form on a voice assistant device. We explained that digital media is always decrypted at some point in the playback process and can theoretically be accessed at that point, but that such access is often extremely difficult and impractical.

Finally, we discussed MPAA *et al.*'s factually inaccurate argument that EFF's petition was somehow untimely because EFF proposed a more precise definition to cover the same class of devices described in our initial petition. We reiterated that the core exemplars of this class of devices are the Amazon Echo family, the Google Home, and the Apple HomePod, although other devices also fit the revised definition.

EFF appreciates the time and thoughtful consideration of the Copyright Office staff on these issues.

Respectfully submitted,

Mitchell L. Stoltz
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Electronic Frontier Foundation