BEFORE THE
Library of Congress
Copyright Office
Notice of Inquiry
In re Exemption to Prohibition on
Circumvention of Copyright
Protection Systems for Access
Control Technologies

REPLY COMMENTS OF
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IN SUPPORT OF COMMENT #3 BY JENNIFER GRANICK, THE WIRELESS ALLIANCE & ROBERT
PINKERTON

CLASS OF WORKS IDENTIFICATION:

I respectfully submit the following reply comment in support of Comment #3 by
The Wireless Alliance and Robert Pinkerton, represented by Jennifer Granick,
Stanford Center for Internet and Society Cyberlaw Clinic, which was submitted
in connection with the Copyright Offices' October 3, 2005 Notice of Inquiry.
The commenting parties proposed an exemption from the Section 1202(a)(1)
prohibition on the circumvention of technological measures that control access
to a copyrighted work for the following class of works:

Computer programs that operate wireless telecommunications handsets. (Mobile
firmware)

SUMMARY

My team was asked to design a program for use on mobile phones and we needed
an unlocked phone that would allow us to install our software onto it for
development. First, we had a difficult time finding such a phone. Then, once
we purchased an unlocked phone, it accidentally got reset and locked once
again, halting our work. Our inability to unlock the phone significantly
hindered our software development. I believe that if we were allowed to
unlock phones ourselves, it would promote the creation of new products for
mobile users.

ARGUMENT AND FACTUAL SUPPORT

I was a software engineer working for a company that designs and writes
applications for use on mobile telephones.

In 2001, a client wanted my company to write a MIDlet, or piece of Java-
enabled software written for a mobile device, for use with a particular type
of mobile phone. However, the client was unable to provide us with a phone to
do our development work on in a timely manner. In particular, we needed one
that would allow us to install our software for testing. Since the phone
model that they wanted to use for the MIDlet, a Motorola iDen model phone, was
commercially available, we decided to just go to the local Nextel to store to
buy one.

The first problem was trying to buy a phone, without purchasing a service plan
attached to it. We had to make many phone calls to Nextel and wasted hours
trying buy a new mobile phone without service that would also allow us to
install our own software. At last, we were allowed to buy a phone without
service.

However, while testing the phone, someone accidentally reset it, which
automatically locked it and rendered it unusable for development purposes. It
took many more phone calls to both Motorola (the manufacturer) and Nextel (the
carrier provider, which had configured the phone to automatically lock when
reset) and two days before we were able to get the Nextel folks to agree to
unlock the phone for us so that we could use it to test our MIDlets.
Eventually, we had to take the phone back into the Nextel store to have

someone unlock it.

Although mobile phone manufacturers do, commonly, make special phones available for development work, we were under time pressure that didn't allow us the luxury of signing up for a development handset and waiting for it to be delivered. Buying an off-the-shelf consumer device should have provided us with a significant time savings, but the fact that such devices are commonly locked made it very difficult for us to realize the required time savings and much of the time we could have saved was wasted making phone calls to Motorola and Nextel.

The auto-locking features of the phone were frustrating and extreme. These settings resulted in significant business delays for my company and hindered our ability to innovate and design new software for use on mobile phones. If we were allowed to unlock phones, it would promote the creation of new products for mobile users.