

March 28, 2013

The Honorable Patrick Leahy
Chairman
U.S. Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Bob Goodlatte
Chairman
U.S. House of Representatives
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairmen Leahy and Chairman Goodlatte:

In her testimony last week before the Subcommittee on Courts, Intellectual Property, and the Internet, Register Pallante noted the need to review the efficacy of the Digital Millennium Copyright Act (DMCA). Over the first few months of the 113th Congress, we have seen a growing frustration among American consumers with the way that the DMCA constrains them from using their electronic devices in lawful, non-infringing ways. Recently, over 110,000 individuals petitioned the White House asking for an exemption to the DMCA to unlock mobile devices so that consumers can move the phones they own to new wireless networks. The White House agreed with this petition and several members of Congress—including you—have taken action in the wake of the White House's response to the petition.

We, the undersigned groups and individuals, represent a wide range of interests, and stand united in two ideas. First, we believe that Congress should act quickly to ensure that this exemption to the DMCA can be codified permanently. Second, we believe that consumer concern about cell phone unlocking highlights a need to examine the DMCA's anticircumvention provisions more fully in the future.

It is clear that copyright law should not stand in the way of consumers using their own phones with the wireless network of their choice. Codifying the legality of wireless device unlocking will provide the certainty that this law will not stand in the way of consumer rights and competitive markets, now or in the future. Codifying an unlocking exemption brings the law in line with common sense and will prevent yet another return to a flawed process that creates a perpetual re-lobbying of many settled issues every three years. While some Congressional proposals would return this decision to the Library of Congress, more permanent proposals from Senators Wyden and Klobuchar ensure that solutions to this problem will be lasting. We urge the Congress to remove wireless unlocking from this bureaucratic treadmill and enact language similar to the proposals from these legislators.

These proposals enact sound public policy that can be made consistent with our existing international agreements. To the extent that a perceived conflict may exist between them and any free trade agreements, Congress can instruct the U.S. Trade Representative to

renegotiate any such ill-advised provisions and ensure that our trade agreements reflect our domestic law and policy. As Register Pallante said last week, it is up to Congress to lead in these issues.

In the longer term, we believe that the widespread concern about cell phone unlocking illustrates how these parts of the DMCA can interfere with consumer rights and competition policy. This interference is not limited to the realm of mobile communications devices. Congress must take action to ensure that laws and policies are keeping up with the pace of technological change. Not addressing these questions will stunt advances in access to digital media for people with disabilities and may prevent new innovations and competitive uses for emerging devices, as uncertainties around the law and the three-year cycle creates a chilling effect for individuals, businesses, innovators and investors who may be covered by the law.

To that end, we request that as the leadership of the two committees of jurisdiction, you convene hearings this year to investigate these possible reforms to the anticircumvention provisions of the DMCA in order to begin a thorough discussion of these problems.

Sincerely,

Organizations and Companies

Amicus (AmicusHQ.com)	MakeGamesWithUs Inc.
Apportable, Inc.	Meldium
BigCalc (Quilli, Inc.)	Microryza Inc.
BitNami	midnox inc.
BoingBoing	ModMy LLC
CircuitHub	NY Tech Meetup
CoderWall / Appdillo Inc.	PolitiHacks
CryptoSeal, Inc.	PollEverywhere
Data Foundry	Public Knowledge
Electronic Frontier Foundation	reddit
Entertainment Consumers Association	SaurikIT, LLC
Fight For The Future	Semantics3, Inc.
FixtheDMCA.org	Software Freedom Law Center
floor64	Teespring LLC
Golden Frog	viaCycle, Inc.
iFixit	Y Combinator
The Internet Archive	Zaranga, Inc.

Individuals (Affiliation provided for identification only)

Jesse Cooke, Chief Technology Officer, Watsi

Peter Decherney, Associate Professor of Cinema Studies, University of Pennsylvania

Jennifer Granick, Director of Civil Liberties, Stanford Center for Internet and Society

Sina Khanifar, Author, White House Petition on Phone Unlocking

Derek Khanna, Visiting Fellow, Yale Information Society Project

Alexis Ohanian, Co-founder, reddit, startup investor

Laura Quilter, Copyright and Information Policy Librarian, UMass Amherst

Elizabeth Stark, Entrepreneur-in-Residence, Stanford StartX

Rebecca Tushnet, Professor of Law, Georgetown University

CC: The Honorable Charles Grassley, Ranking Member
The Honorable John Conyers, Ranking Member