

Before the
U.S. COPYRIGHT OFFICE
Washington, DC 20554

In the Matter of)	
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)	
Proposed Exemption to Prohibition on)	Proposed Class 12: Unlocking — All-
Circumvention Under 17 U.S.C. § 1201)	Purpose Tablet Computers
)	
)	

REPLY COMMENTS OF CONSUMERS UNION

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I. The Copyright Office Should Grant the Exemption for All-Purpose Tablets

These reply comments are respectfully submitted on behalf of Consumers Union, the policy and advocacy arm of Consumer Reports. We are an expert, independent nonprofit organization whose mission is to work for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves. Consumers Union supports the following exemption that would encompass both mobile handsets and hand-held wireless devices, such as tablets, that are functionally equivalent:

Computer programs, in the form of firmware or software, that enable a mobile wireless communications device to connect to a wireless communications network, when circumvention is initiated by –

- 1) the owner of the device,
- 2) another person at the direction of the owner, or
- 3) a provider of a commercial mobile radio service or a commercial mobile data service at the direction of such owner or other person,

solely in order to enable the device to connect to other wireless communications networks, subject to the connection to any such other wireless communications network being authorized by the operator of such network.

The term “mobile wireless communications device” means (1) a wireless telephone handset, or (2) a hand-held mobile wireless device used for any of the same wireless communications functions, and using equivalent technology, as a wireless telephone handset.

Consumers Union filed initial comments supporting this exemption for both Proposed Class 11: Unlocking — Wireless Telephone Handsets and Proposed Class 12: Unlocking — All-Purpose Tablets, because these devices are functionally equivalent for wireless communications purposes and are locked to wireless networks using similar technology.¹

¹ See Comments of Consumers Union, Docket No. 2014-7 at 2-3 (Consumers Union Comments).

No parties have opposed the exemption for unlocking tablets.² As we detailed in our initial comments, Consumers Union's proposed exemption for all-purpose tablets provides the benefits to consumers that Congress recognized in passing the Unlocking Consumer Choice and Wireless Competition Act.³ The proposed exemption protects consumers from the unnecessary uncertainty of DMCA liability when they circumvent technological protection measures to connect their tablet to a wireless network of their choosing, with the network operator's authorization. There are strong chilling effects placed on good-faith consumers who desire to unlock their mobile devices but fear DMCA liability.⁴ The legal cloud of DMCA liability not only discourages legitimate activity by consumers, it also hampers innovation in the wireless marketplace.⁵ Consumers are adversely affected by the anti-circumvention prohibition and, absent an exemption, will continue to be.

Additionally, our initial comments made a *prima facie* case that unlocking tablets is non-infringing, because Congress explicitly recognized as much in the Unlocking Act.⁶ We also showed that other legal rationales support a finding that circumventing technological protection measures to connect tablets to a different wireless network is legitimate and non-infringing.⁷ And we also showed that the nonexclusive statutory factors weigh in favor of granting the exemption.⁸

² TracFone Wireless filed an opposition to the related Proposed Class 11 exemption regarding wireless handsets. To the extent the Copyright Office might consider TracFone's arguments regarding Proposed Class 11 relevant to Proposed Class 12, Consumers Union's reply comments filed in Proposed Class 11, which we incorporate by reference here, address those arguments. Two parties filed oppositions to other proposed unlocking exemptions, but, as these parties note, their concerns are not relevant to the proposed exemptions for unlocking either mobile handsets or tablets. *See* Comments of General Motors; Comments of Alliance of Automobile Manufacturers.

³ *See* Unlocking Consumer Choice and Wireless Competition Act, Pub. L. No. 113-144, 128 Stat. 1751 (2014) (Unlocking Act).

⁴ *See* Consumers Union Comments at 13-14.

⁵ Consumers Union described these concrete harms in its initial comments. *See id.* at 14-16.

⁶ *Id.* at 9-10.

⁷ *Id.* at 10-12.

⁸ *Id.* at 19-23.

Because we have met our burden demonstrating that unlocking tablets is a legitimate, non-infringing activity adversely effected by the lack of an exemption, we respectfully ask the Copyright Office to grant the exemption for Proposed Class 12: Unlocking — All-Purpose Tablet Computers.

Respectfully submitted,

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