

New copyright rules hinder ability to 'unlock' phones, critics object

March 15 2013, by Jeff Gelles

Imagine that the next time you buy a car, it's chock full of electronic gizmos and Web-linked software - cool stuff that, say, instantly warns you about a crash up ahead before you get stuck in traffic.

Not too hard, is it? Electronics and software are common in today's cars.

Now, imagine that before you drive off, the salesperson alerts you that the car's software is protected by an encrypted digital lock and circumventing that software - say, by taking your car elsewhere for service if your mechanic has to break that lock - could be against the law.

Corynne McSherry, of San Francisco's [Electronic Frontier Foundation](#), says that troubling scenario isn't as far-fetched as it may sound. Instead, she says, it's easily comparable to the latest twist in rules limiting the ability of cellphone owners to take their phones to a different wireless carrier.

New U.S. Copyright Office rules that apply to phones purchased since Jan. 26 appear to make it illegal for phone owners or third parties to "unlock" a phone equipped with a digital lock installed by the carrier that sold it.

Although there's been some high-profile pushback - after 114,000 people signed a [petition](#) objecting to the rule, the Obama administration called for its reversal in early March - it's not clear what will happen.

"No one's actually brought this issue to court," McSherry says. But she and other opponents of the unlocking rule say the fight is just a skirmish in a larger battle over what she calls "a very dangerous law": 1998's [Digital Millennium Copyright Act](#) (DMCA).

To its many critics, a key problem is a provision in the law that makes it generally illegal to break a product's digital encryption - unless the Copyright Office authorizes an exemption and renews it every three years. Phone-unlocking won such exemptions twice previously, most recently in 2009. But not this time - except for phones bought before the rule's effective date.

As a result of that same encryption provision, and the Copyright Office's reluctance to intervene, the DMCA is the law that blocks you from doing other things you'd probably consider perfectly reasonable, such as figuring out how to watch your DVD of "The Godfather" on your iPad during a long plane flight. Critics say the law has stymied electronic innovation, and has even blocked computer scientists from publicly discussing their research.

Why does phone-unlocking matter?

To you, it may not. If you've never been unhappy with your carrier, never moved to a place where its signal was weak, or never wanted to use your phone cheaply while traveling overseas, the issue may never even have come up.

But phone-unlocking arose to meet a need: consumer frustration in such circumstances. The last time I sought to unlock a phone was when my daughter was traveling to India - U.S. carriers charge exorbitant fees for overseas roaming.

The wireless industry itself has acknowledged the demand for unlocked

phones - a fact that the Copyright Office, part of the Library of Congress, acknowledged. Some phones are now sold unlocked, albeit without the carriers' usual deep discounts, and carriers have become more willing to provide unlocking codes for older phones.

Ironically, the Copyright Office says the carriers' industry association didn't object "to a 'narrowly tailored and carefully limited exception' to permit individual customers of [wireless carriers](#) to unlock phones for the purpose of switching networks."

But the Copyright Office decided otherwise - as it also did against a proposal to allow an exemption for what it calls "space shifting": allowing people to break encryption on, say, a legally purchased DVD to watch its content on an iPad.

McSherry says the DMCA essentially gives the Copyright Office a "veto on innovation" and blocks perfectly lawful uses of devices or content that consumers have purchased.

"What they're protecting is the carriers' business model - that we're going to sell you a discount phone in exchange for selling you service," she says.

And that's not what copyright law is meant to protect.

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