

iPhone “jailbreaking” exempt from DMCA

Jason Lomberg, Technical Editor



The feds have just dropped a bomb: The Library of Congress has [added exemptions](#) [1] to the Digital Millennium Copyright Act (DMCA) that make “jailbreaking” legal. Apart from fundamentally altering Apple’s business model, the ruling has re-opened the schism between supporters and opponents of digital rights management.

Every three years, the Library of Congress reviews possible exemptions to the anti-circumvention provisions of the DMCA. On Monday, the [latest exemptions were announced](#) [2], including the following whopper:

“Computer programs that enable wireless telephone handsets to execute software applications, where circumvention is accomplished for the sole purpose of enabling interoperability of such applications, when they have been lawfully obtained, with computer programs on the telephone handset.”

In other words, jailbreaking your iPhone is now legal.

iPhone “jailbreaking” exempt from DMCA

Published on Electronic Component News (<http://www.ecnmag.com>)



For all the furor generated, it's worth pointing out several provisions:

- Apple does not have to jailbreak the iPhone themselves, and the company may still install protective measures against jailbreaking.
- Apple may still determine that jailbreaking voids the warranty.
- The third party apps transferred to the iPhone must still be lawfully obtained. Pirated software is still illegal.

On the matter of jailbreaking, Apple has [made its position crystal-clear](#) [3]. The company has unequivocally declared that “jailbreaking constitutes copyright infringement.” Accordingly, jailbreaking represents a violation of [17 U.S.C. § 106 \(2\)](#) [4], which gives copyright holders exclusive rights to “prepare derivative works based upon the copyrighted work.”

At issue is the [iPhone Software License Agreement](#) [5] (IPSLA), which all users agree to. The key word is *license*. Users do not own the proprietary iPhone software. I quote from the IPSLA: “The software (including Boot ROM code and other embedded software), documentation and any fonts that came with your iPhone, whether in read only memory, on any other media or in any other form (collectively the “iPhone Software”) are *licensed, not sold*, to you by Apple Inc” (emphasis mine).

iPhone “jailbreaking” exempt from DMCA

Published on Electronic Component News (<http://www.ecnmag.com>)

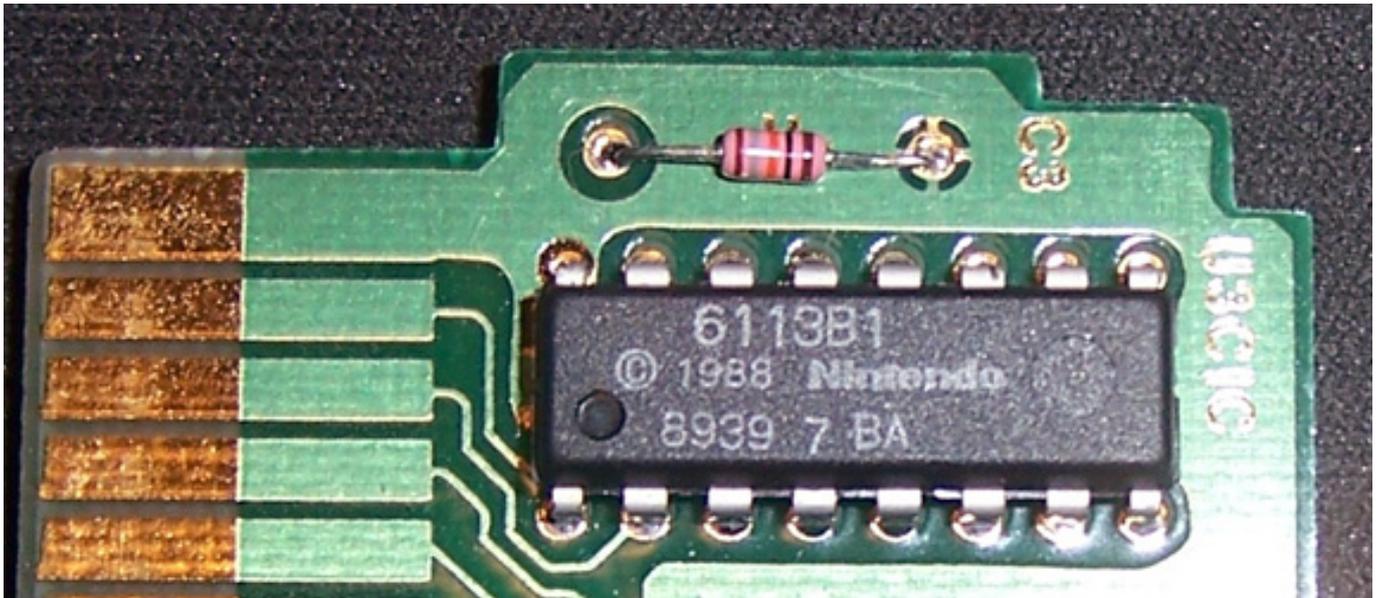
Under the IPLSA, you may not “copy, decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the iPhone Software, iPhone Software Updates, or any part thereof.” All of this is perfectly consistent with 17 U.S.C. § 106 (2).

Opponents of DRM see this as a hard-fought victory. The Electronic Frontier Foundation (EFF), which originally requested the exemptions, [issued this statement](#) [6]: “By granting all of EFF's applications, the Copyright Office and Librarian of Congress have taken three important steps today to mitigate some of the harms caused by the DMCA,” said Jennifer Granick, EFF's Civil Liberties Director. “We are thrilled to have helped free jailbreakers, unlockers and vidders from this law's overbroad reach.” Predictably, sites like [Techdirt](#) [7] and [CrunchGear](#) [8] praised the ruling.

In his “[User's Manifesto](#) [9],” Devin Coldewey of CrunchGear flatly declares that, “no company or person has the right to tell you that you may not do what you like with your own property.” Granted, but iPhone users don't own the software. They license it. As stated in the IPLSA, “You own the media on which the iPhone Software is recorded but Apple and/or Apple's licensor(s) retain ownership of the iPhone Software itself.”

An historical parallel can be found with Nintendo. With the NES, Nintendo exercised strident (some would say, *draconian*) quality control. The great [video game crash of 1983](#) [10] was caused, in part, by a glut of lousy software (including the infamous [E.T.](#) [11]). Developers flooded the market with junk, and Atari paid the price. Nintendo faced an uphill battle: with the NES launching in 1985 (two years after the “crash”), they needed to win the confidence of retailers and consumers.

Nintendo's primary quality control measure was its “[10NES System](#) [12],” a lock-out chip. Only authorized games were allowed on the NES, though various developers, such as Tengen (Atari's NES subsidiary), found ways around it. Critics excoriated Nintendo for its cutthroat business practices, but the facts speak for themselves: the NES is considered by many to be the greatest video game console of all time.



**10NES chip from Super Mario Bros./Duck Hunt cartridge.
Credit to Fender Edwards of Wikipedia.**

If Nintendo hadn't exercised the same quality control measures in 1985 that Apple employs today, there wouldn't be a video game industry. At best, it would've remained a niche hobby for adolescent boys.

Hardware manufacturers should be allowed to veto content on their own devices. But I realize many of my readers may disagree. So by all means, leave your comments below, or e-mail me directly at jason.lomberg@advantagemedia.com [13].

Source URL (retrieved on 03/30/2015 - 3:23am):

http://www.ecnmag.com/articles/2010/07/iphone-%E2%80%9Cjailbreaking%E2%80%9D-exempt-dmca?qt-video_of_the_day=0

Links:

- [1] <http://www.wired.com/threatlevel/2010/07/feds-ok-iphone-jailbreaking>
- [2] <http://www.loc.gov/today/pr/2010/10-169.html>
- [3] http://www.wired.com/images_blogs/threatlevel/2010/06/applejailbreakresponse-1.pdf
- [4] <http://www.copyright.gov/title17/92chap1.html#106>
- [5] <http://www.apple.com/legal/iphone/us/terms/sla.html>
- [6] <http://www.eff.org/press/archives/2010/07/26>
- [7] <http://www.techdirt.com/articles/20100726/09564610361.shtml>
- [8] <http://www.crunchgear.com/2010/07/26/how-will-apple-respond-to-the-dmca-revision-they-wont/>
- [9] <http://www.crunchgear.com/2010/04/18/the-users-manifesto-in-defense-of-hacking-modding-and-jailbreaking/>
- [10] http://en.wikipedia.org/wiki/Video_game_crash
- [11] [http://en.wikipedia.org/wiki/E.T._the_Extra-Terrestrial_\(Atari_2600\)](http://en.wikipedia.org/wiki/E.T._the_Extra-Terrestrial_(Atari_2600))

iPhone “jailbreaking” exempt from DMCA

Published on Electronic Component News (<http://www.ecnmag.com>)

[12] <http://en.wikipedia.org/wiki/10NES>

[13] <mailto:jason.lomberg@advantagemedia.com>