

From: J. Fisher
Class of Works: Access Control Technologies
Number: 5

I am writing in support of a permanent exemption to the DMCA for users of smartphones to modify ("jailbreak"/root) these devices in any manner of their choosing.

I am an avid smartphone end user. If my device was not rooted I would be unable to run basic security software, such as a firewall, which allows me to control what applications can access wifi and mobile data networks. It should be an absolute right of the user to control which applications on their smartphone are sending data back to other people's servers and which are not.

I would also be unable to run software that creates a blacklist of IP addresses not allowed to download content to my device. Again, this provides security benefits, allows me to streamline the functionality of my smartphone's browser, and can be used by parents to control what content their children can access. The right of the user to control the content of their device should be absolute.

In addition, I would not be able to use very useful backup software, which can backup all apps and settings on my device. Modern smartphones are complicated devices that, like desktop computers, often fail and crash. Everyone knows that backup of computers is essential. Lack of backup options also stultifies experimentation and innovation with different apps, because it is not worth the risk of messing up one's mobile OS to try something new. Whereas having a good backup makes it easy to take innovative chances and reset a system to its previous state, if problems occur.

I also use a custom ROM on my device. This allows me to have much more control over the user interface on my device and access to innovative features. The ROM I use has made improvements to the notifications system, control over device settings, use of data features, and many other innovations that are frequently later copied and adopted in the official OS of smartphone devices. Thus the custom ROM developers are an important and often vastly under-recognized part of the overall rate of innovation with smartphone devices. Because a certain level of bugs is more acceptable in the custom ROM community, this often makes the rate of innovation much higher and more rapid, than with the official device ROMs.

Lastly, because I have root access to my device I can install a custom OS kernel. I do this in order to implement an audio boost feature that increases the maximum possible earpiece speaker volume during calls. This is immensely useful for improving the basic phone call functionality of the device. Some users don't like the higher audio level, but I am often in loud environments where my device would otherwise be unusable as a phone. These sorts of choices for users are basic to what capitalism is supposed to offer. Yet all too often the dominance of a few companies, with what amount to vertical monopolies, limits choices and things like the DMCA act facilitate this process of curtailing and limiting the possibilities that capitalism is supposed to allow.

In addition, all we are talking about here is what amounts to the user of a smartphone having what would be root or administrative privileges on a desktop computer. This is a level of control on desktop computers that goes without saying and would cause enormous harm to business and individuals if it was not possible. The smartphone is just a small handheld computer. Why because the computer fits in my hand does control over the device suddenly belong to the manufacturer? There is no logic here whatsoever. I have not licensed the device for my use. I own it. I should control it.

Indeed, in general, the idea that once a user has purchased a physical device they can not modify it in any way that they see fit goes against every principle of democracy and capitalism. It would be like telling a car owner they cannot modify their car, because the understanding of the car design necessary to modify it violates the auto manufacturer's copyright on the design. This is tantamount to saying the manufacturer has legal rights over what the user is allowed to think, because they are not allowed to understand the design of the device they own, merely by examining it themselves. The principal of the free exchange of ideas (essential to democracy and capitalistic innovation) means that

the power of copyright should not extend to what an individual does in their home, with their physical property, to saying nothing of what an individual comes to understand about a device they have legally obtained. The property right at stake here is the property right of the user (not the so called "intellectual property," a misnomer for copyright privileges, of the manufacturer).

Thank you.