

# Long Comment Regarding a Proposed Exemption Under 17 U.S.C. 1201

## Item 1. Commenter Information

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## Item 2. Proposed Class Addressed

**Proposed Class 11: Unlocking – wireless telephone handsets.**

## Item 3. Overview

Gazelle and eBay are the leading legitimate “reseller” and “reseller marketplace,” respectively, of wireless telephone handsets. Our businesses rely, directly or indirectly, on the purchase from consumers of telephone handsets that are sold as “locked” to a specific carrier network and that according to the terms on which their consumer owners acquired them are eligible to be “unlocked” so that they may be re-sold and connected to a different network. As resellers and reseller marketplaces we support each of the petitions filed in this class and in particular support the relief requested by the Institute of Scrap Recycling Industries (“ISRI”), which specifically addresses the issue of “bulk unlocking.”

As is documented herein, commercially significant numbers of consumers owning eligible phones experience difficulty and/or failure in attempting to unlock them or to follow carriers’ processes for unlocking them. Most locked phones cannot be resold for the same price as an unlocked phone, hence the prices that resellers have offered and presently offer to consumers for most locked eligible phones have been and are substantially lower than the prices offered to the same consumers for the same eligible phones when they are or can be unlocked. We support the petitions for exemption to allow a reseller to unlock an eligible phone on behalf of a *selling* consumer, or on behalf of a reseller as its rightful owner, so as to be able to re-insert the phone into the stream of lawful domestic and international commerce. This is consistent with the Office’s current treatment of phones, as established by the Unlocking Consumer Choice and Wireless Competition Act (P.L. 113-144, “Unlocking Act”) but would clarify that the exemption covers phones in the hands of legitimate sellers as well as phones in hands of purchasers. We endorse renewal of the unlocking exemption on this basis.

#### **Item 4. Technological Protection Measure(s) and Method(s) of Circumvention**

Handsets are not locked to protect access to any copyrighted content or computer program or system. Indeed, some carriers sell the same model phones without locking them in the first place.<sup>1</sup> Rather, the “locking” consists of a code comprising or requiring a “secret handshake” whose only purpose is to assure that, for the period in which the owner commits to use the phone on the carrier’s system in exchange for acquisition at a discounted price, the owner or a subsequent owner cannot use the phone on any other carrier’s system. Once this period has expired, the handset becomes contractually *eligible* for unlocking, but the unlock code is available only from the carrier to whose system the phone is locked. Circumvention would consist of effectively applying such a code without the authority of that carrier.

#### **Item 5. Asserted Noninfringing Use(s)**

According to precedent, circumvention of an “unlock code” so that a phone can be used on a competing network involves neither infringement of copyright nor violation of DMCA Section 1201. In the leading case of *Lexmark Intern. v. Static Control Components*,<sup>2</sup> the Sixth Circuit held that a computer program preventing the use of unauthorized printer cartridges “is not generally entitled to protection when used necessarily as a lock-out device.” *Lexmark* at 544. The court observed further that even if protectable, copying of the program for purposes of circumvention may well be a fair use because the infringement did not appear to impact “the market for the copyrighted work itself.” The court went on to hold that circumvention of a lockout code of such nature is also not a violation of DMCA Section 1201:

Nowhere in its deliberations over the DMCA did Congress express an interest in creating liability for the circumvention of technological measures designed to prevent consumers from using consumer goods while leaving the copyrightable content of a work unprotected. *Id.* at 549.

The court referred as well to the testimony of Professor Jane Ginsburg in a prior Rulemaking Hearing:

Section 1201(a) does not “cover[] the circumvention of a technological measure that controls access to a work not protected under [the Copyright] title. And if we're talking about ball point pen cartridges, printer cartridges, garage doors and so forth, we're talking about works not protected under this title.” *Id.*

The holdings to this effect in *Lexmark* and in *Chamberlain Group v. Skylink Technologies*<sup>3</sup> have been commonly accepted as authoritative and were unanimously endorsed in

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<sup>1</sup> For example, whereas AT&T will sell an iPhone as locked, Verizon sells the same iPhone as unlocked. The only difference this makes in a phone’s operation or security is whether or not the phone will operate on a competitive carrier’s system.

<sup>2</sup> 387 F. 3d 522 (6<sup>th</sup> Cir. 2004, hereinafter “*Lexmark*”).

<sup>3</sup> 381 F. 3d 1178 (Fed. Cir. 2004).

the Sept. 17, 2014 House Judiciary “IP” Subcommittee hearing on Section 1201.<sup>4</sup> All participating Committee members and every witness to address the subject said that to claim circumvention under Section 1201 for functional access to industrial objects is an “abuse” of the DMCA. Rep. Marino, in an opening statement on behalf of Subcommittee Chairman Coble, said:

Some have raised concerns about how the DMCA has been used by companies for purposes other than protecting copyrighted content. Fortunately, courts have generally gotten it right in determining when digital locks are used for protecting content and when they are used to protect anti-competitive behavior. As everyone knows, Mr. Coble has not been a fan of those who abuse the legal system using our Nation’s intellectual property laws whether they are copyright, patent or trademark laws. And I concur with him. So we’d like to hear more about ways to ensure that Chapter 12 is used to protect copyrighted works rather than printer cartridges and garage door openers as has been attempted before.<sup>5</sup>

Judiciary Committee Ranking Member Conyers added:

For example, some critics contend that copyright owners use Section 1201, as a tool to stifle competition and repeatedly cite the laser printer cartridge replacement and garage door opener cases in support of their contention. Fortunately, courts in both these cases ruled against the companies who had attempted to use Chapter 12 to inhibit competition.<sup>6</sup>

Judiciary Committee Chairman Goodlatte observed in his own statement for the record:

As someone who was very active in negotiating all of the DMCA, I am not sure that anyone involved in the drafting would have anticipated some of the TPM uses that have been litigated in court. Such as replacement printer toner cartridges and garage door openers.<sup>7</sup>

eBay and Gazelle are aware that in the last triennial proceeding the Office dismissed as unnecessary a petition seeking an exemption for access to literary works in the public domain: “Because public domain works are not ‘protected under [Title 17],’ the prohibition on circumvention does not apply to such works . . . . In such a case, it is lawful to circumvent the technological protection measure and there is no need for an exemption.”<sup>8</sup> We would not oppose, as an alternative to grant of these petitions, a recommendation of dismissal if made by the Office on explicitly the same basis – that *circumvention in this case does not apply*.

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<sup>4</sup> *Chapter 12 of Title 17: Hearing Before the Subcomm. On Courts, Intellectual Property, and the Internet of the H. Comm. on the Judiciary*, 113<sup>th</sup> Cong. (2014).

<sup>5</sup> *Id.* at 1 - 2.

<sup>6</sup> *Id.* at 4.

<sup>7</sup> *Id.* at 64. *See also* Rep. Farenthold at 77 – 78.

<sup>8</sup> Section 1201 Rulemaking: Fifth Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention, Recommendation of the Register of Copyrights at 13 – 15 and n. 66, citing similar outcomes in 2010 and 2003 Final Rules. (Oct. 2012).

## Item 6. Asserted Adverse Effects

In the attached Declarations, eBay and Gazelle document that the inability to unlock Eligible Phones has depressed both the market for them and the prices that can be offered to consumers. The Declaration of Chris Sullivan, CEO of Gazelle, establishes:

- A reseller must offer a consumer a price for many locked eligible phones that is significantly inferior to the price the reseller can offer for the same phone if it has been unlocked, or if the reseller is assured of being able to unlock it on behalf of either the seller or himself.
- Substantial numbers of consumers are not willing or able to complete the unlock process offered by AT&T, at all or in a commercially relevant period.
- When AT&T ceased providing such codes to resellers, the market value of locked eligible AT&T phones in the hands of consumers declined sharply relative to the value of unlocked phones.
- The only alternative to applying an unlock code or circumventing the lock is to trade in the phone to a carrier, thus depriving the consumer of lawful competition for the purchase of her eligible handset.

### Answers to Questions Posed in NPRM

In its Notice of Proposed Rulemaking (“NPRM”) the Copyright Office posed these questions as to the “unlocking” exemptions generally, and as to class 11 in particular:

*Whether and in the context of the Unlocking Act “an owner of a device at issue ... also owns the firmware and/or software that runs the devices for purposes of 17 U.S.C. 117 ....”*

The circumstance addressed by Section 117 is that a program is essential to *using* a work, rather than to *not* using it. Our position is that it should not matter whether the consumer or reseller owner of an eligible phone is also deemed the owner of the software that operates that phone, because, per *Lexmark*, a lock program is not a protected expressive work. However, if the Register concludes that lock computer programs are nevertheless protected programs essential to the *operation* of an eligible phone, Section 117 would give *any* owner of an eligible phone the right to copy that program in the process of unlocking it. Similarly, the right to unlock a phone so that it may be *bought or sold for* connection to a network is a right of “maintenance or repair” because the lock code is impeding the phone’s ordinary and lawful function.

### *Networks to Which Proposed Unlocking Exemptions Would Apply*

As is noted in the attached Declarations, much of the value of the sales price that can be paid by a carrier or a reseller to a consumer for an eligible phone depends on the ability to resell it for connection to overseas networks. Nothing in the Unlocking Act or in the exemption requests would restrict the connection of eligible phones to domestic networks only, and to do so would

severely degrade the prices that can be paid to consumers, not only by resellers or reseller marketplaces, but *also* by carriers, who also unlock and sell substantial numbers of phones taken in trade for connection to overseas networks. Accordingly, any limitation or specification of the networks to which an unlocked phone can be connected would be anticompetitive and would neither protect nor achieve any public benefit.

#### *Current Unlocking Policies of Carriers and Whether Adherence To CTIA Unlock Guidelines Obviates Need for Exemption*

As is documented below, the conduct establishing the most profound need for an exemption was initiated by AT&T approximately two months before the adoption of the CTIA Guidelines and has persisted to this date. We are not in a position to judge whether the conduct is in violation of those guidelines but assume it is not. In addition to AT&T, T-Mobile and Sprint also sell locked phones to which the guidelines apparently would apply. To date, any application of the referenced guidelines has not ameliorated the need for an exemption.

#### *The Extent To Which Unlocked Mobile Phones Are Available For Purchase*

A consumer owning an eligible locked phone and wishing to sell it to a reseller or through a reseller marketplace does not have the option of purchasing an unlocked phone in order to help complete the transaction to sell her locked one – so no such alternative option exists. (The consumer may as part of a new service inducement trade-in the locked phone to a carrier for an unlocked one, which transfers to the carrier, rather than solves, the suppression of resale device competition.)

#### *Whether the Exemption Should Be Limited To “Used” Handsets*

While “used” handsets are by far the most common example of “eligible” phones there are some circumstances in which there is lawful commerce in eligible phones that have not been used. The extent to which commerce in both new and used phones may be unlawful due to theft or fraud is being addressed pursuant to the work of a Federal Communications Commission Technical Advisory Committee in which we have participated. Hence we believe that the recommendations of the Register need not address what constitutes an “eligible” phone.

#### *Whether the Exemption Should Address “Bulk” Circumvention*

In these Comments we have established that (1) consumers’ obtaining full value for the phones that they own must involve unlocking on behalf of a consumer as *seller* of a phone, so should not be limited to the consumer as a buyer wishing to connect a phone; (2) consumers cannot easily or reliably manage the process of unlocking as provided by carriers, leading to a depression in prices offered to consumers, and (3) the value to consumers as offered by carriers as well as by resellers and reseller marketplaces depends substantially on the ability to re-sell the phones in wholesale quantities on legitimate international markets. The only way to address these facts, so as to allow consumers to receive full value for an owned eligible phone, is for the exemption to cover unlocking by a reseller, (a) at the selling consumer’s request, or (b) unlocking “in bulk” – *i.e.*, unlocking of eligible the phones by the reseller, as the owner of each eligible phone.

*Any Changed Circumstances In The Need For An Exemption Over The Last Three Years, Including The Emergence of Viable Alternatives.*

As is indicated in the attached, the need for a “bulk unlock” exemption arose *within* the last three years and persists.

*Whether The Previously Granted Exemption Has Had An Adverse Effect On The Marketplace For The Accessed Copyrighted Works*

In the FCC Technical Advisory Committee’s review of security and theft issues pertaining to mobile handsets, it has not been suggested that unlocking a phone from a carrier network has made any computer program available for copying for commercial exploitation. As in *Lexmark*, the locking applied to mobile handsets denies access to phones, not works. Hence, grant of an exemption cannot have any adverse effect on the marketplace for works.

**Item 7. Statutory Factors**

“Statutory factors” (i) – (iv) listed in this Item refer to and assume access to an expressive work, which, as set forth above, is not the case with respect to locking codes for telephone handsets. Unlocking an eligible phone has no impact on the value of any copyrighted work. It does, however, enhance the value of the handset, which likely contains copyrighted works not involved in locking or unlocking and which remain unaffected.

**Item 8. Documentary Evidence**

Declarations are attached.

Declaration of Chris Sullivan, President & Chief Executive Officer, Gazelle

1. I am the President and CEO of Gazelle, Inc. (“Gazelle”). I have knowledge of these facts as a result of Gazelle’s business records and analyses as reported directly to me. The subject of this declaration is the harm experienced by customers and potential customers of Gazelle as a direct result of (1) consumers’ difficulty in unlocking mobile phones that, pursuant to the consumer’s carrier agreement, are eligible for unlocking (“eligible phones”), and (2) Gazelle’s present inability to unlock eligible phones on behalf of those phones’ legitimate sellers who are or would be our customers.
2. Gazelle is a small but growing company and a pioneer and innovator in the business of offering to purchase phones and other mobile devices that, pursuant to carrier agreements with consumers, are eligible for resale by that consumer.<sup>9</sup> Because the iPhone was the first popular “smart phone” and was offered first and exclusively by AT&T, Gazelle’s service to consumers has been driven largely by commerce in eligible AT&T iPhones. From 2010 to October 2013 Gazelle’s annual revenue grew from approximately \$20 million to more than \$100 million. Gazelle’s growth and its opportunity to offer value to customers for eligible phones were thereafter impacted and limited by a change in AT&T’s unlocking practices for eligible phones that occurred on or about October 1, 2013. In the fourth quarter of 2013 alone, the change in the AT&T unlocking practices had a severe negative impact on Gazelle’s revenue and Net Income. The lower prices being paid for our pre-owned phones led directly to lower payments being made to the customers who sold those phones to Gazelle.
3. In 2014 Gazelle accepted nearly a half million smartphones in trade from individual consumers. Of those device received, 74 percent were locked.
4. The ability of Gazelle to obtain market value for a used device is greatly affected by whether the product remains locked to a specific carrier network. In part because much of the market for eligible iPhones, particularly AT&T phones, is overseas, Gazelle cannot obtain as high a price for resale of a locked phone as it can for resale of the same phone when it has been or can be unlocked. Thus Gazelle cannot make as valuable an offer to a consumer for an eligible locked AT&T phone as it can for that phone when it is unlocked *or* when Gazelle is confident that it can unlock that phone, or have it unlocked, on behalf of the phone’s legitimate *seller*. Accordingly, Gazelle’s business model demonstrates that there are as legitimate reasons for unlocking eligible phones on behalf of a consumer *seller* who has *previously connected* the phone to a network, as there are for unlocking the phone on behalf of a buyer who intends to connect it to a network.
5. Gazelle has also been a pioneer in assuring the eligibility of acquired phones. Gazelle works with and relies upon data from Recipero, the leading service in providing provenance assurance.<sup>10</sup> Through Recipero, Gazelle has access to the same data on which carriers rely in

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<sup>9</sup> Gazelle’s history and growth are detailed at [https://www.gazelle.com/our\\_story](https://www.gazelle.com/our_story), the accuracy of which I hereby affirm.

<sup>10</sup> Gazelle announced its partnership with Recipero in deploying Recipero’s CheckMEND service in 2012. *Id. See*, <http://www.recipero.com/checkmend>.

determining that a phone is not lost or stolen. Gazelle performs the same checks that carriers do before finalizing an acquisition of a phone and putting it back into the stream of domestic or international commerce, and would rely on AT&T's own determination of whether a phone is "eligible" for unlocking. Gazelle also works directly with some carriers such as T-Mobile to determine whether a phone is still subject to financing and therefore not eligible to be sold to Gazelle. We would be happy to incorporate a similar check process with AT&T to exclude financed phones from being sold to us.

6. From the inception of Gazelle's business in iPhones in 2008, AT&T routinely provided the codes necessary to unlock their phones to a variety of re-furbishers and re-sellers, allowing wholesalers who purchased phones from Gazelle to unlock those phones by having AT&T compare the phones' "IMEI" numbers with AT&T's own records. On about October 1, 2013, however, AT&T ceased providing these unlock codes to Gazelle's wholesale customers. Gazelle immediately requested and continues to request of AT&T that AT&T resume its prior practice, or agree to a system whereby Gazelle, upon an appropriate request and certification by the individual selling the phone to Gazelle, would obtain unlocking codes directly from AT&T. Gazelle offered to assume the financial risk for any phone determined by AT&T not to be eligible. AT&T however continues to refuse to furnish unlocking codes to Gazelle or to its customers under these or any other circumstances.
7. As a direct and immediate result of AT&T's ceasing to provide unlocking codes for eligible phones to Gazelle or to its wholesale customers, the prices that Gazelle and its competitors have been able to offer to consumers for eligible phones have declined sharply, and have remained significantly lower than the price Gazelle can offer for an unlocked phone, or for a phone that Gazelle knows it can unlock upon the request of the selling consumer. Gazelle's current online offers for consumer phones, showing the current differential between the offers for locked and unlocked AT&T iPhones, are available to anyone at [www.gazelle.com](http://www.gazelle.com).<sup>11</sup>
8. Although Gazelle has taken every possible step to assist its selling consumers in having their phones unlocked by AT&T through its on-line process, and although Gazelle has consistently tested, developed, and improved its ability to assist consumers through this process and tried to assure customers that the process is not difficult, fully 46 percent of Gazelle's customers sell their eligible AT&T phones to Gazelle in "locked" condition and accept the lower offer for their phone.
  - a. Ten percent of the Gazelle customers who attempt to unlock phones contact Gazelle for assistance.
  - b. Forty percent of customers contacting Gazelle for assistance report failure and /or belief that their phone remains locked due to an error by AT&T.

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<sup>11</sup> Based on Gazelle research, payments to consumers in 2014 for locked AT&T phones averaged 72% of payments for the same unlocked phone for the iPhone 4, and 81% for the iPhone 4S. In a highly competitive market these differences are substantial and significant. Gazelle has not been obliged to offer price differentials on products other than AT&T iPhones.



- c. Gazelle estimates that in 2014 fully 29 percent of customers who began the process of selling a phone to Gazelle failed to complete it because of the complexities of the unlocking process.
  - d. In addition to direct costs to the consumer, Gazelle's extensive efforts and outreach to encourage customers to complete the process and to help them to do so add to Gazelle's costs overall, unnecessarily impacting Gazelle's ability to offer prices competitive with those offered by carriers for trade-in.
9. Although Gazelle does all it can to encourage its customers that they can perform the AT&T unlock process for eligible phones, and to assist them in doing so, the frustration experienced by customers arises from built-in waiting periods, ambiguities, unclear choices, and complexities such as finding and furnishing code numbers. The waiting periods can range from 2 to 60 days. As a final step, a complex iTunes procedure is required, in which the consumer must have the latest iTunes version, back up the device, transfer and sync content to a computer, disable the Activation Lock, and Restore the phone. The self-unlock process requires that the customer must physically retain the phone and wait, even though she has bought a new one; customers buying a new AT&T iPhone must wait a minimum of 14 days before AT&T will unlock their old phone. It makes a carrier's trade-in process, where the carrier rather than the customer assumes these burdens, relatively more attractive than attempting to recover full value through an open-market sale to a legitimate reseller.
10. Examples of consumer frustration as received by Gazelle and maintained in Gazelle's business records illustrate consumer confusion and frustration:

#000377

Hello, This is incredibly frustrating as I followed the exact procedures outlined by AT&T and seconded by Gazelle. The phone said it had been unlocked successfully. After waiting for two weeks to get it unlocked in the first place from AT&T now it is for some reason still locked. In addition, even if I could go through the process again, how do I do that now that you have the phone? Please help! Thank you and have a great day.

#000745

I called AT&T for the past 3 days. The problem was they never took us off the family plan-when we originally signed up we had three lines to include myself and our two sons. Our oldest son went into the military 10 years ago and it took us 5 years to get them to realize we were not using three lines. The last 2 times I have gotten a new phone I have only received a new phone and yet this last call at 1215 I finally drilled it into their head that we only had one line. Therefore, we would not be completely cutting our service with them But what really upset me was the fact that he told me that the phone will not be unlocked until the 12th. I had to hand the phone to my husband I was so upset. My husband was livid! Our second son left for the Navy 5 years ago. Most customer service reps are at least apologetic about the mistakes. His attitude was "Oh well." The Case number is [omitted for this Declaration]

50483

I just received an email saying they couldn't unlock the phone? Can you tell me if that is correct? Since the att email I forwarded said I could unlock it- this is confusing me- I don't like att- thanks

2421

I contacted support at Gazelle and let them know I had a glitch with ATT. They claim the phone is not an ATT phone but I have had it has ALWAYS been an ATT iphone. Support said if we could straighten it out they would stick to the original quote. I'm currently trying to get a hold of ATT support to clear this matter. They already unlocked our other iphone!

#19845

I have sent my iPhone 4 to gazelle. I sent a unlock form to ATT which they accepted. ATT sent me instructions to connect my phone to iTunes to backup/restore phone. Since I don't have it anymore, what do I do?

#00419

When I initially got a quote to sell my phones back to Gazelle I was unable to unlock my phone with AT&T. I didn't want to wait on getting the quote so I priced it for a locked phone. Now thanks to the extension on returning the box, I've been able to wait out the 14 days since getting a new phone and was able to unlock the old one. Can the offer be adjusted to \$25 more for each phone since they are now unlocked?

#10819

AT&T says the device IS unlocked but I am tired of the hassle.

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Under penalty of perjury I affirm that this Declaration accurately reflects my knowledge as President & CEO of Gazelle, Inc.

*/s/Chris Sullivan*

Chris Sullivan

President & CEO, Gazelle, Inc.

Declaration of Tod Cohen, Vice President and Deputy General Counsel, eBay Inc.

My name is Tod Cohen, and I am the Vice President and Deputy General Counsel of eBay Inc. (“eBay”). With 155 million active buyers globally, eBay is one of the world's largest online marketplaces, where practically anyone can buy and sell practically anything. Founded in 1995, eBay connects a diverse and passionate community of individual buyers and sellers, as well as small businesses. Their collective impact on ecommerce is staggering, and more than 700 million items are listed on eBay.

According to the Copyright Office, the goal of the current rulemaking proceeding is “to determine whether there are particular classes of works as to which users are, or are likely to be, adversely affected in their ability to make noninfringing uses due to the prohibition on circumvention of access controls.” This determination thus depends on the presence of two things: adversely affected users and noninfringing uses. Noninfringing uses were addressed in Item 5 above; this declaration addresses the adversely affected users.

eBay’s “Cell Phone and Smartphone” category is hugely popular with our users and our platform enables the sale of millions of these devices annually. Unlocked phones are an important segment for our users within this market. Our customers – both buyers and sellers – benefit by the availability of unlocked phones in the marketplace (or, conversely, would be affected adversely without an exemption). Customers on the seller side of the transaction benefit by being able to list and sell unlocked phones. Customers on the buyer side of the transaction create this demand for several reasons. First, many of our purchasers buy unlocked phones so that they are not burdened by the restrictions associated with a long-term contract with a single carrier. These customers are willing to buy unlocked phones so they can choose less expensive plans from competing carriers. Second, many purchasers visit ebay.com in order to replace a phone that has been lost or damaged. Without this option, these customers – if not insured – remain bound to the replacement terms of their contract, which typically restrict user choice and impose additional costs far above an unlocked phone. Third, many purchasers who travel abroad need to buy an unlocked phone in order avoid outrageously expensive roaming charges from their carrier. With an unlocked phone, these customers can avoid such charges by buying a SIM card in the destination country and paying significantly lower local rates.

Additionally, we are concerned that a failure to renew the exemption will create unnecessary legal burdens for many of our users. eBay’s Verified Rights Owners (VeRO) program is the most advanced and successful notice and takedown program of its kind, and is designed to receive 17 U.S.C. § 512 (DMCA) notices as well as other notices of infringement. Currently, there are over 40,000 official participants in the program. We are concerned that in the absence of the requested exemption, wireless providers will submit DMCA notices through VeRO or initiate other legal action in an effort to remove certain cell phones from the eBay platform – to the detriment of our users.

eBay urges the Copyright Office to maintain the exemption for Proposed Class 11. It is our belief that renewing the exemption will continue to foster competition in the marketplace, continue to create opportunities for sellers, and benefit consumers without adversely impacting copyrighted works in any way.

Tod Cohen  
Vice President and Deputy General Counsel  
eBay Inc.