

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

Submitted by:

iFixit

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Item 1. Commenter Information

iFixit is an international, open-source, online repair manual for everything. Our mission is to provide people with the knowledge to make their things work for as long as possible. Because we believe that repair saves money, fosters independence, and protects the planet.

iFixit is global community of makers, hardware hackers, fixers, tinkerers, and repair professionals. In 2014, the iFixit community taught repair to over 40 million people from almost every country in the world. The strongly collaborative group has published over 10,000 crowd-sourced repair guides on iFixit.com. This massive, free resource has helped people fix everything from mobile phones to game consoles, toys to musical instruments. iFixit also stands firm in its support of the tinkerers and independent repair professionals in our community. We believe that owners should have the right to repair, modify, and hack the things that they own.

Item 2. Proposed Class Addressed

Proposed Class 19: Jailbreaking – video game consoles

Item 3. Statement Regarding Proposed Exemption

Jailbreaking isn't a crime. At least, it shouldn't be. But under the auspices of Section 1201, software modders and gamers have been cast as criminals—simply for taking control of a gaming system that they legally own.

iFixit represents a large community of hackers, modders, and tinkerers. Our users often repurpose devices, including Xboxes, PS3, and other gaming consoles. With a combination of hardware hacks and software tweaks, our community is able to make those devices last years longer than their designers could have ever dreamed. We extend their functionality and repurpose them for new uses. In short, we keep environmentally sensitive electronics in use and out of local landfills.

Many modern devices have hardware that will last long beyond when the software will be supported and relevant. Apple stopped supporting the software on the iPhone 3GS, for example, even though there were (and still are) many in use. Hundreds of volunteer programmers quickly built software that repurposed these phones for a variety of new uses. Just as jailbreaking a phone—a practice that the Copyright Office recognizes as valid—extends the device's functionality, jailbreaking a console opens up a whole new world of possibilities to owners. Consoles don't just have to be a gaming platform. They house within them a powerful computer, which can be easily and cheaply repurposed as a home media device or a general computing device. But repurposing the console requires jailbreaking the system.

"I've seen all sorts of great things done on liberated devices, from clustered consoles turned into cheap supercomputers, to individual consoles converted to PCs for use as inexpensive educational platforms," [Xbox hacker Bunnie Huang told us](#). "In some countries, there is a very high import tariff on computers, but video game consoles are classified differently by customs, so jailbreaking a console is one of the cheapest ways to get a PC. There's of course the use of liberated consoles as media centers, which is a popular and widespread use of converted consoles. But let's not forget the very important but mundane cases of jailbreaking to apply a bugfix to the firmware, or to repair worn out or broken parts, or to just run some homebrew apps."

Modifying the software on a game console isn't necessarily undertaken as part of a ploy to pirate games. In many cases, jailbreakers are embracing a spirit of innovation. They push at the

boundaries of what is possible with materials already at hand. As [US News points out](#), “The United States Air Force networked 1,700 PS3's to form one of the most powerful supercomputers in the world. A researcher at the University of Massachusetts used a grid of eight PS3s to simulate gravitational waves.” Under current copyright law, though, those US airmen and university researchers could be considered and prosecuted as criminals—just for tinkering with computers in consoles.

Many times, jailbreakers simply modify the programming on their gaming systems to install different operating systems on their devices. For example, Sony gave users the option of running the Linux operating system when the PS3 was released in 2006—a feature Sony later pulled. Now, it is only through jailbreaking that users can reclaim that capability. And while the Xbox 360 and the Nintendo Wii never came with the option to run Linux, developers and researchers have found a way to run the open source operating system on jailbroken gaming platforms. Certainly, swapping to a different (even if unapproved) operating system doesn't qualify as pirating copyright content?

Users of jailbroken consoles also have the ability to run ‘homebrewed’ software, they benefit from a wider selection of applications, and they can more fully customize their systems. Yes, jailbroken consoles can also be utilized to pirate games. But piracy is already a crime—whether or not the pirate defeats a technological protection measure over firmware. And pirates will continue to pirate games—whether or not jailbreaking a console is legal.

Denying this exemption only handicaps the users who are jailbreaking to expand the functionality of their machines. It punishes the researchers who probe the murky depths of programming to identify security weaknesses. And it penalizes the modders who want a little more choice about how their consoles perform. Worse, it stifles the spirit of homebrew, crowd-sourced innovation that drives technological breakthroughs.

The Copyright Office has already recognized that jailbreaking mobile phones for personal use doesn't violate copyright law. They affirmed that phone owners have the right to access a wider ecosystem of

functionality, even if that ecosystem isn't authorized by the manufacturer. iFixit is asking the Copyright Office to extend those same freedoms to the owners of gaming consoles. Because jailbreaking is not a crime.

It's time to liberate our consoles.