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CASE STUDY

# The iPhone Jailbreak: A Win Against Copyright Creep

By Adam Cohen | Wednesday, July 28, 2010

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Over the years, Apple has become almost as well known for the tight control it imposes on its innovations as for the tech and marketing genius behind them. If you buy an iPhone in the U.S., for instance, Apple makes you use AT&T as your carrier and it requires you to buy any new applications from its App Store. But some owners have been hacking their iPhones to get around these rules — a process known as jailbreaking — and this week the federal government gave them what amounts to a get-out-of-jail-free card by ruling that the hacks do not violate Apple's copyright. It is the right decision, and one that promises to give customers more freedom in how they use all kinds of new technology.



Hannelore Foerster / Bloomberg / Getty Images

The jailbreaking battle is part of a larger war raging right now over copyright law. Corporations have been pushing to extend copyright protections further than they were intended to go, to reduce competition and increase their profits. This week's ruling pushes back against this copyright mission creep.

(See [Techland's take on the iPhone jailbreak.](#))

Apple's rules for the iPhone are pretty unusual. When you buy a television, you can choose between a cable or satellite provider (and in some cases a telephone provider as well) and watch any TV shows you want. When you buy a DVD player, you can play any DVDs. But buyers of iPhones are told precisely what they can buy and where they have to buy it.

The reason Apple has gotten away with locking down its phones to this degree is simple: customers like their iPhones so much that Apple can dictate its terms and most people will play along. (I get it: I am one of those wild iPhone fans.)

Jailbreakers are the customers who refuse to fall into line. They hack their iPhones so they can use T-Mobile or other carriers, and they download unapproved software from websites like Rock Your Phone, which bills itself as an "independent iPhone application store." Some of the jailbreakers are classic tech-geek rebels. But others insist that they are acting out of necessity, because Apple's approved products do not meet their needs.

Apple has fought back. It has warned customers that if they install unauthorized apps they risk damaging their iPhones. It has told them that jailbreaking may invalidate warranties. And it has accused jailbreakers of violating copyright law.

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Now the Library of Congress, which operates the Copyright Office, has taken away Apple's copyright argument. Jailbreaking is "fair use," it decided, and therefore not a copyright violation. This ruling on jailbreaking was one of several good decisions issued by the Copyright Office this week. Another one makes it easier for college professors and documentary filmmakers to use small video clips without running afoul of the law.

The Electronic Frontier Foundation (EFF), which made the formal application to the Copyright Office to give the green light to jailbreaking, hailed the Copyright Office's decision as a major breakthrough. According to the EFF, as many as 1 million users may have jailbroken their iPhones, and this week's ruling takes them out of legal danger.

Others are cautioning, however, that there may be less to the decision than meets the eye. Harvard Law professor Jonathan Zittrain points out that even with the ruling, it is still illegal to market tools whose purpose is to help people hack. That means that while jailbreakers are off the hook, the developers who provide the unapproved apps may still be violating the law.

Still, the ruling clearly sends a message, and one that goes beyond the category of smartphones. It reaffirms a much broader principle: that making programs "interoperable" is not a copyright violation. That should give consumers a lot more freedom in how they use all sorts of devices — even ones that have not been invented yet.

Apple's attack on jailbreaking is only the latest in a long line of attempts by large corporations to extend copyright law farther than it should go. At the behest of big business, Congress passed the Sonny Bono Copyright Term Extension Act in 1998, adding decades to existing copyrights. Critics argued that the law, which was upheld by the Supreme Court in 2003, locks up creative works longer than is necessary or appropriate. As a result, they say, the public domain is diminished — and works that should be freely available are not.

[\(See why Verizon users should opt for the Droid.\)](#)

Yet if companies like Apple are taking too extreme a position in the war over copyright, so is the other side. A growing anticopyright movement has emerged in recent years. Using the rallying cry "Information wants to be free," it argues that protection of intellectual property should be scaled way back. If this side prevails, there is a real danger that creativity will be stifled because artists and inventors will not be adequately compensated for their work — and they may lose their incentive to produce.

Given the extremes to which both sides in the copyright debate are prone, the government needs to work hard to stake out a sensible middle ground. Congress, the courts and agencies like the Copyright Office have to protect legitimate intellectual property while at the same time ensure that copyright is not abused. With its ruling on iPhone jailbreaking, the Copyright Office struck just the right balance.

*Cohen, a lawyer, is a former TIME writer and a former member of the New York Times editorial board*

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