



Reform of the U.S. Copyright Office
U.S. House of Representatives Judiciary Committee
Comments of the Competitive Carriers Association

Competitive Carriers Association (CCA)¹ applauds the House Judiciary Committee, under the leadership of Chairman Goodlatte and Ranking Member Conyers, on the release of the first Policy Proposal following the Committee’s review of U.S. Copyright Law. CCA generally supports the first Policy Proposal, and is pleased the Committee embraced the idea that the Copyright Office needs to be modernized for the 21st Century. The proposed Advisory Committees of diverse subject-matter experts would be particularly helpful, especially with respect to triennial rulemakings under section 1201 of the Digital Millennium Copyright Act (DMCA). Advisory Committees could address permanent exemptions, assuaging the need to conduct burdensome triennial rulemakings or Section 1201 studies. For example, the Copyright Office has repeatedly examined exemptions to circumvent software or firmware locks that prevent consumers from connecting their wireless devices to a different network (the “device unlocking” exemption). In future Proposals, CCA asks the Committee to enact legislation making permanent the current device unlocking exemption, rather than subjecting the issue to yet another burdensome triennial review. Such legislation will, consistent with the Committee’s goals, help to ensure that Title 17 is beneficial to consumers, practical for industry, and resilient as technology rapidly evolves.

When the Copyright Office failed to adopt an exemption for unlocking wireless devices in the 2012 triennial rulemaking, public and industry outcry led to the unanimous, bipartisan passage of PL 113-144, the Unlocking Consumer Choice and Wireless Competition Act (Unlocking Act). As Chairman Goodlatte said in a statement after reaching bipartisan agreement with Senate leadership, the Unlocking Act “will protect consumer choice by allowing flexibility when it comes to choosing a wireless carrier. [Device unlocking] is something that Americans

¹ CCA, the leading association for competitive wireless providers and stakeholders across the United States, has been the principal advocate for adopting a permanent exemption to the device unlocking exemption. Our membership includes nearly 100 competitive wireless providers ranging from small, rural carriers serving fewer than 5,000 subscribers, to regional and national providers serving millions of customers. CCA also represents approximately 200 associate members consisting of small businesses, vendors, and suppliers that provide products and services throughout the mobile communications supply chain. Considering the importance of this issue to members, CCA is pleased to engage with the House Judiciary Committee to promote competition and consumer choice.

have been asking for and I am pleased that we were able to work together to ensure the swift passage of legislation restoring the exemption...” Ranking Member Conyers remarked, “consumers deserve to have options in what carriers they choose and what phones they want to use.”

The Librarian of Congress again adopted a device unlocking exemption in the 2015 triennial rulemaking. Yet, absent a permanent exemption, consumers could soon again find themselves in an environment where switching mobile carriers necessitates the purchase a new wireless device and the transfer of personal data and purchased digital assets. Switching devices is disruptive and expensive, and increasingly so as Americans rely on mobile devices for an ever-growing set of uses and applications.

Device unlocking is particularly important for America’s rural and regional wireless carriers that lack the scale to gain access to the latest, most in-demand mobile devices directly from equipment manufacturers. The ability to legally unlock a mobile device for use by a consumer with any carrier over any compatible network is necessary to correct a market imbalance that, in the past, led to exclusive contracts between dominant carriers and manufacturers for the most sought-after devices. This dynamic has, and could, prevent millions of consumers from accessing the device of their choice, stifling competition and innovation in some of the most technologically underserved and unserved regions of our country.

Making permanent the exemption would also relieve advocates and stakeholders from expending considerable resources to seek a new unlocking exemption. Advocates for non-dominant industry stakeholders, and many consumer representatives from universities to non-profit organizations, are often ill-equipped to shoulder the staffing, capital and time resources needed to effectively participate in a triennial rulemaking. In fact, there is broad support for reforming the triennial rulemaking process itself, in addition to the exemption. In response to last year’s *Section 1201 Study Notice of Inquiry*, CCA and other stakeholders asked the Copyright Office to depart from conducting *de novo* review of existing exemptions, like device unlocking, at every triennial rulemaking, and instead establish a presumption of renewal for existing exemptions. The Copyright Office’s rulemaking process is taxing and creates lingering uncertainty for competitive carriers and the consumers they serve. A permanent exemption for device unlocking would help to free up resources among federal employees, carriers, consumers, and other interested parties.

CCA supports making permanent the unlocking exemption as articulated by the 2015 exemption. This forward-thinking policy is the right move for America. The 2015 exemption, which expanded the scope of the incumbent exemption following Congressional direction in the Unlocking Act, covers both cellphone unlocking and other devices incorporated in the Internet of Things (“IoT”). This exemption puts consumers first, recognizing the importance that customers place on their devices.

Consumers spoke loudly and clearly on this issue: they do not want to be forced to choose between losing their devices and being locked onto an undesirable network. Industry has recognized the benefits of device unlocking, and Congress has robustly supported this policy.

CCA encourages Congress to advance copyright law in future Policy Proposals by including a permanent unlocking exemption.

CCA thanks Chairman Goodlatte, Ranking Member Conyers, and the members of the House Judiciary Committee for their examination of such an integral part of America's intellectual property and commercial process, and their commitment to its success. CCA looks forward to working with the Committee as it moves copyright law into the modern era.