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Via Email and First Class Mail

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United States Copyright Office
P.O. Box 70400
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Re: Docket RM 2011-07 Exemptions to Prohibition on Circumvention of
Technological Measures that Control Access to Copyrighted Works

Dear Mr. Carson:

CTIA-The Wireless Association ® respectfully submits the following response to the questions asked in your June 21, 2012 letter relating to cell phone unlocking.

- 3. At the May 31 hearing, the Office raised questions about the future of the mobile phone subsidy business model that has been part and parcel of the wireless industry for the last decade. In a May 7, 2012 article in the Wall Street Journal entitled “Carriers Chip Away at Phone Subsidies,” it was reported that the wireless industry’s current subsidy arrangements with device manufacturers is undergoing some degree of change. In light of this article, please discuss the future of mobile phone subsidies, their evolving role in the mobile wireless marketplace, and whether such a possible shift has any relevance to this rulemaking.**

CTIA Response: CTIA does not (and is not able to) have access to the confidential business plans of its member carriers. Accordingly, the following response is based on public information.

CTIA respectfully disagrees that the referenced Wall Street Journal (“WSJ”) article reports that “the wireless industry’s current subsidy arrangements with device manufacturers is undergoing some degree of change” in the United States. The article identifies two carriers in Spain that have ceased subsidies and notes that a third carrier in that country has not followed suit and is reported as hoping “to use its competitors’ moves to increase its market share in Spain.” The article further quotes Apple’s CEO as stating that “the Spanish market, which is reeling from Europe’s economic crisis, shouldn’t be viewed as a proxy for the world.” Indeed, wireless markets vary significantly around the world. Thus, for example, it has

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been reported that Brazilian operator Oi changed its no-subsidy strategy at the end of 2011 and is now subsidizing smartphones due to the need to be competitive in the face of increasing demand for high-priced tablets and smartphones. RCRWireless, Americas, Analyst Angle: Oi took too long to realize the importance of subsidizing handsets (December 21, 2011).¹ At most, the WSJ article asserts (without identified basis) that “U.S. companies are closely watching” the “experiment” in Spain.

It is CTIA’s understanding that the U.S. fees referenced in the WSJ article do not equate to the elimination of phone subsidies, which have proven extremely popular with consumers and have served widely to increase consumer choice. CTIA expects that carriers will have a strong incentive to provide consumers with the options they seek in the highly competitive wireless industry. The WSJ article quotes Verizon Communications Chief Executive Lowell McAdam as making essentially that point, saying the carrier may offer certain options and see how consumers respond – “You can’t push this on customers before customers are ready for it.”

The evidence suggests that, if anything, phone subsidies are increasing. Strategy Analytics reports that the average subsidy per device in North America has increased from \$86.70 in 2009, to \$99.00 in 2010, to \$116.40 in 2011. Source: Strategy Analytics Wireless Device Strategies Service. Just last month, T-Mobile had a two day promotion that offered all of its “4G” smartphones for free with a two year contract.²

CTIA respectfully believes that speculation concerning possible, but wholly uncertain, changes in the market should not affect this rulemaking. *See* Comments of CTIA – The Wireless Association @, February 10, 2012, in this docket. There is no evidence demonstrating that such changes will occur within the next three years, or how any changes that might occur might affect cell phone locking or unlocking. The essential point is that proponents have failed to meet their burden of proving either (i) substantial harm from phone network locks, or (ii) any effect on a lawful use of a copyrighted work.

4. It was recently reported in the press that both Sprint and Leap Wireless will be offering iPhones on a pre-paid plan basis. Please state whether these

¹ <http://www.rcrwireless.com/americas/20111221/carriers/analyst-angle-oi-took-too-long-to-realize-importance-of-subsidizing-handsets/> (last accessed July 2, 2012).

² *See* <http://www.latimes.com/business/technology/la-fi-tn-t-mobile-fathers-day-free-4g-20120613,0,7323715.story> (last accessed July 2, 2012).

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devices will be locked to their respective wireless networks. (For all witnesses.)

CTIA Response: CTIA contacted both carriers in an attempt to answer this question. CTIA has been informed by Virgin Mobile that its iPhone will be locked to its network. We have not yet received a response from Leap, but press reports indicate that the Cricket (Leap) iPhone will have an unlocked international SIM slot, but will be locked against use with other U.S. carriers.³

5. Please indicate, in percentage terms or, if percentages are unavailable, in as accurate a fashion as possible, how many mobile wireless providers other than AT&T, Verizon, Sprint, and T-Mobile now use mobile phone locks to keep customers on their respective wireless networks. (For all witnesses.)

CTIA Response: CTIA, regrettably, does not have this information and is not able to obtain it in the time made available. It is CTIA's understanding, however, that the great majority of carriers, including those advocating unlocking, lock at least some of their phones.

* * *

CTIA appreciates the opportunity to participate in this rulemaking and would, of course, be happy to answer any further questions or clarify its responses.

Respectfully submitted,



Bruce G. Joseph

Counsel for CTIA-The Wireless Association®

³ See <http://www.usatoday.com/tech/news/story/2012-06-17/pegoraro-iphone-cricket-virgin/55619450/1> (last accessed July 2, 2012).