



Steven J. Metalitz
A Professional Corporation
(202) 355-7902 Phone
(202) 355-7892 Fax
met@msk.com

July 11, 2012

VIA EMAIL & U.S. MAIL

David O. Carson, Esq.
General Counsel
U.S. Copyright Office
Library of Congress
P.O. Box 70400
Washington, DC 20024
1201@loc.gov

Dear David:

On behalf of the Joint Creators and Copyright Owners, I am pleased to supplement our prior response to your letter of June 21, 2012 regarding Proposed Exemption #5 in Docket No. RM 2011-7, Exemptions to Prohibition on Circumvention of Technological Measures that Control Access to Copyrighted Works. Your letter asked us to respond to the Electronic Frontier Foundation's submission¹ of July 2, 2012 regarding the following question:

At the May 17 hearing, the Office raised questions concerning the scope of the proposed class of works, specifically whether there is any evidence that there is a need for, or evidence in support of, jailbreaking e-readers, such as the Kindle and the Nook. Please provide evidence supporting the inclusion of these devices, including those versions of the Kindle and Nook that serve solely or primarily as ebook readers, in the proposed class of works.

In reviewing the transcript from the May 17 hearing, we identified two primary issues posed by the Office that specifically relate to this question. First, the Office asked EFF to explain why it is necessary to hack ebook readers to accomplish tasks more suited for multi-purpose computing devices, especially considering that hacking an ebook reader potentially exposes literary works resident on the device to unauthorized access and infringement. *See* May 17 Transcript at 116-117 (statement of Mr. Carson). Second, the Office asked EFF to address why an exemption is necessary given that some ebook readers already enable many of the functions (such as reading email) that EFF claims hacking will enable on more limited ebook readers. *See id.* at 118-119 (statement of Ms. Pallante).

¹ Although you asked us to respond to the submissions of all proponents who responded to your letter, we were only copied on the submission made by EFF. If other proponents responded on this issue, we would appreciate an opportunity to respond to those submissions as well.

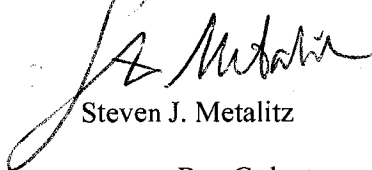
David Carson, Esq.
July 11, 2012, Page 2

EFF's July 2 response fails to address either of these questions. Instead, EFF merely lists a number of functions it claims some consumers wish to enable on ebook readers, all of which can be accomplished on other devices. Not only can all these tasks be accomplished on other devices, they can be accomplished on other devices *without circumvention*. In addition, EFF completely ignores the increased risk of infringement that the proposed hacking would inevitably create, and fails to offer any explanation of why that risk should be deprecated in favor of allowing some consumers to circumvent in order to purchase ebook readers rather than multi-purpose devices, or to purchase single-purpose ebook readers rather than multi-purpose ebook readers.²

As we have stated in our prior filings and during the hearings, EFF has failed to establish that *any* exemption similar to proposal #5 should be granted. For all of those previously referenced reasons as well as the reasons stated herein, the Register should reject EFF's request for an exemption applicable to ebook readers.

Please let us know if you have any further questions.

Sincerely yours,



Steven J. Metalitz

cc: Ben Golant
Jesse Feder
Marcia Hofmann
Jishnu Menon
Art Neill

² A review of the relevant websites, including some referenced by EFF for support in its July 2 submission, sheds some light on the real motivations for some of the "capabilities" that circumvention enables (such as installation of new screensavers). See <http://www.pierotoffanin.com/2011/12/how-to-remove-ads-from-your-ad-supported-kindle-4-for-free/> ("Amazon's Kindle 4 comes in two flavors, one that is ad supported (\$79) and one that isn't (\$109, price difference of \$30). If you have the ad supported one, at any point in time Amazon allows you to pay the difference of \$30 and remove the ads. In this article I will explain not only how you can remove the ads at no cost, but also how you can replace them with your own screensaver images. Very cool stuff!"); <http://www.mobileread.com/forums/showthread.php?t=139279> (comment of giorgio130) ("That one totally works, thanks! Ad-free kindle...."); cf. <http://www.mobileread.com/forums/showthread.php?t=181157> (comment of KNC1) ("The ads are part of the purchase agreement you made with Amazon for the reduced price. If you don't want ads, pay Amazon for the no-ads model.").