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## DMCA Exemption Could Unlock Cell Phones



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**Cell phone carriers have long clung to the Digital Millennium Copyright Act for justification in locking their phones' firmware, but a new exemption to the DMCA allows users to legally unlock their cell phones and use them on different wireless networks. However, that not every mobile phone user will be able to benefit from the exemption.**

Last November, the Librarian of Congress adopted half a dozen exemptions to the Digital Millennium Copyright Act (DMCA), among them one that might give cell phone phone users greater freedom to move between carriers with their mobile devices.

That exemption allows users to legally unlock their cell phones, according to two attorneys with Banner & Witcoff in Chicago.

The attorneys, Timothy C. Meece and Aseet Patel, explain that in the past the mobile phone industry has applied the DMCA  to create software locks that control user access to the firmware in a mobile phone.

Since the firmware in the phone is a copyrighted work, they continue, any attempts to circumvent the software locks to gain unauthorized access to the firmware could lead to prosecution under the DMCA.

### DMCA Blunted

The new exemption changed all that, however. It exempts from DMCA [protection](#) "computer programs in the form of firmware that enable wireless  telephone handsets to connect to a wireless telephone communication network, when circumvention is accomplished for the sole purpose of lawfully connecting to a wireless telephone communications network."

"You may have a phone you bought from [Sprint](#) (NYSE: S)  and Sprint has it locked down so you can only use it in the Sprint network, but it's your phone; you should be able to use it wherever you want to use it," Meece told TechNewsWorld.

"Now the Digital Millennium Copyright Act can't be used to prevent you from unlocking the phone and using it on someone else's network," he opined.

### Can't Unlock Incompatibilities

Patel acknowledged, however, that not every mobile phone user will be able to benefit from the exemption. "There's a bunch of different [networks](#) that the service providers offer -- GSM, TDMA, CDMA," he told TechNewsWorld. "The phone, if it's made for a particular network, is not going to work just because you unlocked it."

"Whenever you have a situation where the protocols themselves won't match, you'll still be able to take advantage of the exemption to the extent that you'll be able to do voice," Meece added.

"You may have trouble with data  or whatever," he continued, "but at least don't have to throw out the phone."

Nevertheless, the impact of the exemption on wireless carriers remains to be seen.

Most of [Verizon's](#) (NYSE: VZ)  phones are already unlocked, Verizon spokesperson Debi Lewis told TechNewsWorld. "Our prepaid phones are locked, but all our phones that are on postpaid plans are unlocked," she added.

Cingular/AT&T Wireless's phones are locked to control theft, to prevent fraud, and to subsidize phone prices for consumers, company spokesperson Kate MacKinnon told TechNewsWorld.

Unlocked phones are more attractive to thieves than locked phones, she contended. "If I'm a thief, I can steal the locked phone and be limited to one carrier, or I can steal the unlocked phone and open up a whole new world of carriers to that phone," she said.

### **Always a Trade-Off**

Locking phones is part of a trade-off consumers make with their carrier in order to get cheaper hardware, continued MacKinnon.

"You're in a contract with us so we can recoup the cost of the phone," she said. "The phone that you would get for (US)\$49 with your two year contract certainly doesn't cost us \$49.

"Many consumers have no desire to use the same phone for more than a couple of years," she added. "Wireless devices evolve rapidly, and there is strong consumer demand for the latest models. We continue to believe that most consumers who switch carriers welcome the opportunity to receive a new phone at a discounted price."

However, the company will unlock phones in some situations, she noted.

In general, she said, the company's policy is to unlock GSM phones upon request, when the customer's contract expires.

The company may also unlock phones for customers who have not fulfilled their contract period but have paid any applicable early termination fee and for customers who has purchased a phone at full price, she added. 

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