

**Before the
COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.**

In the matter of	)	
	)	
Exemption to Prohibition on	)	Docket No. RM 2008-8
Circumvention of Copyright Protection	)	
Systems for Access Control Technologies	)	
	)	

COMMENTS OF SKYPE COMMUNICATIONS S.A.R.L.

Skype Communications S.A.R.L. (“Skype”) hereby files these comments in support of the proposals to exempt from the prohibition on circumvention of access control technologies computer programs that enable individuals to use software applications of their choice on wireless telephone handsets and that enable individuals to use such handsets on wireless networks of their choice (Classes 5A-5D in the *Notice of Proposed Rulemaking*¹). As discussed below, allowing consumers to use devices and software applications of their choice on wireless networks maximizes consumer choice and encourages innovation, and should not be restricted by copyright law.

Skype is a global software company whose software application allows its users to communicate with individuals around the world, either for free (when communicating with other Skype users) or at very low rates (when calling PSTN

¹ *Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies*, Docket No. RM 2008-8, 73 Fed. Reg. 79,425, 79,427 (2008).

phone numbers). In less than six years since founding, Skype has revolutionized the voice calling market, giving hundreds of millions of users² an easy way of staying in touch with friends and loved ones and reducing their long-distance bills (particularly international-calling bills). The Skype software client marries the traditional appeal of voice calling with additional features such as video calls, instant messaging, file transfer, online payment, and so on. Like many software applications that use the Internet, Skype first became popular being used on wired broadband networks; however, its wireless software client is increasingly popular as wireless users seek the benefits offered by Skype including cheaper calls, online presence detection, etc.

Skype strongly supports open wireless broadband networks; *i.e.*, wireless networks on which users can attach (nonharmful) devices of their choice (“no locking”) and use software applications of their choice on such devices (“no blocking”). In February 2007, Skype filed a Petition for Rulemaking³ with the Federal Communications Commission (“FCC”) asking that wireless broadband networks be operated under these openness principles, in keeping with the FCC’s *Broadband Policy Statement*⁴ and its seminal *Carterfone*⁵ decision.⁶ A few

² Skype has over 400 million registered users worldwide.

³ *Skype Communications S.A.R.L. Petition to Confirm a Consumer’s Right to Use Internet Communications Software and Attach Devices to Wireless Networks*, RM-11361 (filed Feb. 20, 2007) (“Skype Petition”).

⁴ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, CS Docket No. 02-52, Policy Statement, FCC 05-151 (rel. Sep. 23, 2005).

⁵ *Use of the Carterfone Device in Message Toll Telephone Service*, 13 FCC 2d 420 (1968).

months later, the FCC adopted no locking and no blocking rules to a vital block of spectrum auctioned off for use by wireless broadband networks.⁷

Over the past several months, the nation's wireless carriers have increasingly embraced the principles of open wireless networks — though their actions so far do not match their words. Wireless carriers and the handset manufacturers they strike deals with continue to employ various means to keep users from using devices and software applications of their choice — from terms of service to the software and firmware loaded on the handsets sold by the carriers. Where carriers and handset manufacturers allow the use of third-party software applications, such as Apple's iPhone App Store (used on the AT&T network) or Google's Android (used on the T-Mobile network), the carriers and handset manufacturers reserve the right not to permit the use of software applications that it deems harmful to its business. For example, while it is possible to install adaptations of VoIP applications on some smartphones,⁸ carriers' Terms of Service typically block more robust "end-to-end" VoIP products that use a wireless broadband connection rather than a narrowband connection that uses the carriers' regular wireless voice minutes. The adapted versions of applications like Skype do not provide wireless consumers with the

⁶ The Skype Petition remains pending at the FCC.

⁷ See *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Second Report and Order, WT Docket No. 06-150, FCC 07-132, at 88, ¶ 189-230 (rel. Aug. 10, 2007) ("700 MHz Order").

⁸ See Bob Tedeschi, *Phone Smart: Free Internet-Calling Services Join the Cellphone App Market*, N.Y. Times, Jan. 29, 2009, at B5, available at <http://www.nytimes.com/2009/01/29/technology/personaltech/29smart.html>.

full range of innovative features that would be available if VoIP application developers were able to harness the full benefits of the wireless data plans that the consumers pay for.

Skype opposes any attempts to restrict the ability of individuals to use devices and software applications of their choice on wireless networks,⁹ and, therefore, supports the proposals to exempt from the anti-circumvention provisions:

1. Computer programs that enable wireless telephone handsets to execute lawfully obtained software applications, where circumvention is accomplished for the sole purpose of enabling interoperability of such applications with computer programs on the telephone handset,¹⁰ and
2. Computer programs in the form of firmware or software that enable mobile communication handsets to connect to a wireless communication network, when circumvention is accomplished for the sole purpose of lawfully connecting to a wireless communication network.¹¹

These two classes of exemptions will ensure that copyright laws do not interfere with the no blocking and no locking open wireless network principles. Enabling wireless handset users to use their unlocked phone on a network of their choice and to use legally-obtained software applications of their choice on their handsets will ensure that they enjoy the benefits of choice and competition with respect to mobile software applications and handsets — not simply choice among wireless networks. Copyright law should not interfere with a user using

⁹ The only exceptions to open wireless networks should be for devices that harm the network and for restrictions on the use of software applications that result from reasonable network management practices.

¹⁰ 73 Fed. Reg. at 79,427, Class 5A.

¹¹ 73 Fed. Reg. at 79,427, Class 5C. Note that Classes 5B and 5D are almost identical to Class 5C and are treated as such in these comments.

his or her phone to run Skype and enjoy the benefits of low- or no-cost long-distance and international calling.

More broadly, users should be able to use their choice of devices and software applications on wireless networks rather than being limited to those devices and applications that are “approved” by the wireless carrier. Allowing end users to choose the devices and applications they use gives them access to a much wider array of devices and applications than would restricting their choices to those offered by wireless carriers acting as gatekeepers — particularly in instances where carriers restrict access to applications, such as Skype, that may threaten part of their business model. An end-to-end network, in which consumer choice is empowered, ensures that innovation occurs at the edges of the network where hundreds if not thousands of application developers and software manufacturers, rather than a handful of wireless carriers, can compete to meet consumer demand.

* * *

For the foregoing reasons, Skype supports the proposals to exempt from the prohibition on circumvention of access control technologies computer programs that enable individuals to use software applications of their choice on wireless telephone handsets and that enable individuals to use such handsets on wireless networks of their choice, *i.e.* Classes 5A–5D. Skype supports no blocking and no locking policies, and opposes any limitations on these wireless consumer empowerment principles that may arise from the DMCA.

Respectfully submitted,

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