“Jailbreaking” is Now Fair Use

The Electronic Frontier Foundation (EFF), a non-profit organization that was founded in 1990, and champions on behalf of consumers regarding any issues affecting digital rights, recently won three critical exemptions to the Digital Millennium Copyright Act (DMCA) anti-circumvention provisions.

The exemptions were granted as part of a statutorily prescribed rulemaking process, conducted every couple of years to mitigate the danger the DMCA poses to legitimate, non-infringing uses of copyrighted materials. The DMCA prohibits “circumventing” digital rights management (DRM) and “other technical protection measures” used to control access to copyrighted works.

My interest lies with the first of EFF’s three successful requests that clarifies the legality of cell phone “jailbreaking.” Despite the negative image this conjures up in my mind, “jailbreaking” mobile phones is now legal in the United States, according to this new government ruling. But what is it? How do you actually do it? And are there any risks?

Simply put – jailbreaking is a practice that allows iPhones and other handsets to run software applications from sources other than those approved by the phone maker. It allows one to shop for apps anywhere on the Internet, and not just the iTunes App Store, where all of the apps must be approved by Apple to go on sale. It is estimated that more than a million iPhone owners are said to have “jailbroken’ their handsets in order to change providers or use applications other than those approved by Apple.

Okay, so now we know that jailbreaking a phone is not illegal, but how does one do it and are there any risks? How to do it is simple, accessing the risks involved in doing so is a bit more challenging. Jailbreaking one’s phone is done just by visiting a website. Called JailbreakMe, the new method is entirely browser-based: all you need to do is visit its Website directly from the iOS device you want to jailbreak and follow the prompts.

The site offers a web-based solution to unlocking an iPhone, and it can jailbreak any iOS device, including iPads and iPod touches, along with older iPhones. By unlocking the phone, a consumer can now access any app that’s out there including ones that have either been banned or forbidden by Apple, such as the Cydia app store.

The rewards for jailbreaking or unlocking your device are obvious, but what about the risks involved? Yes, there are downsides to exercising this new freedom. While it many no longer be against copyright law to jailbreak and unlock a phone, it is still not something Apple is likely to support and will most likely void your warranty and may violate your Wireless Service Agreement. This means that should your phone need repair now, Apple or the manufacturer doesn’t have to fix it.

You will also need to redo the jailbreak/unlock every time you upgrade the iPhone’s operating system. Although at any time it is possible to restore your phone to a non-jailbroken state by plugging it into iTunes and pressing restore. iTunes will automatically restore your iPhone to its original form. Other negative effects could include: the battery may drain faster, the device could be more susceptible to viruses and there is a slight chance that you will “brick” your phone in the process (breaking the software on your phone to the point it can no longer be recovered) leaving you with an unusable device.

So a word of caution - if you are thinking of Jailbreaking your new iPhone 4, think twice. It could end up being a very costly mistake, and there may be legitimate reasons why Apple imposes the restrictions it does on such devices.

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