

Unlocking Consumer Choice and Wireless Competition Act Managers' Amendment to S.517

Restoring Consumers' Ability to Take Their Used Phones To New Providers

The Managers' Amendment to S.517 restores the exemption to the Digital Millennium Copyright Act (DMCA) that allows consumers to "unlock" their used cell phones to change wireless providers after their service contracts expire. By making clear that the law does not prevent consumers from taking their phones to a new network, the bill increases consumer choice and promotes competition in the wireless market.

Restoring the Library of Congress's former exemption so that consumers may unlock their phones after their contracts have expired. Once every three years, the Library of Congress undertakes a rulemaking under 17 U.S.C. 1201(a) to establish exemptions to the DMCA's prohibition on circumventing technological measures that control access to copyrighted works. From 2006 to 2012, the Library granted an exemption for cell phone unlocking that allowed users to change wireless providers after their contracts had expired. In its 2012 rulemaking, the Library did not recognize an exemption for new cell phones purchased after January 26, 2013. The Library's decision prompted a strong public reaction: a petition on the White House website opposing the Library's decision garnered over 110,000 signatures. Senators Leahy, Grassley, and others introduced bipartisan legislation to address this issue in March 2013 (S.517), and the House passed its own version in February 2014 (H.R. 1123). The Managers' Amendment remains focused on ensuring that individual consumers can unlock their phones.

Allowing consumers to obtain help in unlocking their phones. In addition to reinstating the Library's prior exemption, the Managers' Amendment ensures that consumers who lack the technological savvy to unlock their phones themselves can authorize others to do the unlocking for them. The involvement of such third parties is limited to unlocking phones to allow owners or their family members to connect to another wireless network.

Instructing the Library of Congress to determine whether other wireless devices should be eligible for unlocking. Other wireless devices, such as tablets, are of increasing importance to consumers. In recognition of that growing importance and the potential for consumer harm if used tablets cannot be taken to a new network, the Managers' Amendment directs the Librarian of Congress to determine whether the unlocking exemption should include such devices. That determination will be part of the next DMCA rulemaking, set to begin later this year.

Otherwise preserving the status quo. The Managers' Amendment addresses the specific question of permitting consumers to unlock their old cell phones to use on another network after their contracts expire. While there are larger ongoing debates about Section 1201 of the DMCA, as well as other aspects of phone unlocking, those issues are not addressed by this bill.