

UNLOCKING THE iPhone: HOW ANTITRUST LAW CAN SAVE CONSUMERS FROM THE INADEQUACIES OF COPYRIGHT LAW

Abstract: In 2007, George Hotz circumvented the software lock on his iPhone that prevented him from using the device on a wireless network other than AT&T's. When other iPhone purchasers similarly freed themselves from AT&T's service, Apple responded by using a software update to disable the altered iPhones. This back-and-forth between consumers and Apple raises two important questions: can consumers legally unlock their iPhones, and, if so, under what body of law? Although an exemption to the Digital Millennium Copyright Act (the "DMCA") appears to allow consumers to circumvent cell phone locks under copyright law, the regulation is of little practical use to consumers seeking to avoid AT&T's allegedly inferior service. Instead, they should challenge the underlying business arrangement between Apple and AT&T by arguing that tying the purchase of the iPhone to AT&T's service violates Section 1 of the Sherman Antitrust Act. This Note examines this argument and, in doing so, illuminates the limitations of the DMCA and demonstrates how it encourages content providers to engage in anticompetitive behavior.

INTRODUCTION

In June 2007, Apple revolutionized public perception of cellular telephones when it released the iPhone.¹ Much more than just a portable telephone, the iPhone allows users to play music and movies, store photos, and access the Internet, all through a colorful and convenient touch screen.² Unfortunately for consumers, however, use of their iPhones is conditioned on their acceptance of a two-year service agreement with wireless service provider AT&T.³ For many consumers,

¹ See Thomas Crampton, *Eating the iPhone*, N.Y. TIMES, June 29, 2007, at A28; Thomas Crampton, *Much Ado About Apple's iPhone*, N.Y. TIMES, May 21, 2007, at C6; Jeremy W. Peters, *Gave Up Sleep and Maybe a First-Born, but at Least I Have an iPhone*, N.Y. TIMES, June 30, 2007, at C3.

² See Apple iPhone Features, <http://www.apple.com/iphone/features/index.html#phone> (last visited Mar. 25, 2008).

³ iPhone Terms and Conditions, <http://www.wireless.att.com/learn/articles-resources/iphone-terms.jsp> (last visited Jan. 2, 2008). Unlike purchasers of the original iPhone, purchasers of Apple's 3G iPhone, released on July 11, 2008, do not have to enter into mandatory