

Statement of Knowledge Ecology International in Support of the Unlocking Technology Act (H.R. 1892)

June 9, 2013

The bipartisan Unlocking Technology Act (H.R. 1892), introduced by Representative Lofgren (D-CA) and co-sponsored by Representatives DeFazio (D-OR), Eshoo (D-CA), Holt (D-NJ), Massie (R-KY), and Polis (D-CO) takes the welcome step of scaling back the overprotection of “digital locks” and promoting consumer choice and competition.

Copyright law creates legal barriers to the circumvention of technological protections measures (TPMs), also known as “digital locks” for works protected by copyright. These locks have notoriously been abused and can be used to protect works, even where there is no underlying copyright infringement. Current copyright law provides for extremely narrow exceptions to circumvention of a digital lock and new exceptions are only permitted where the Librarian of Congress issues one and, even then, such an exemption lasts for a mere three-year period.

Consumers are negatively impacted by the broad protections for digital locks, limiting their choices and harming competition. Current copyright law creates legal barriers to unlocking cell phones or tablets and the Librarian of Congress recently rejected a proposal to allow an exemption that would allow customers of wireless cell phone services from unlocking their phones and switch carriers, even after the expiration of the contract period.

The Unlocking Technology Act takes the welcome step of giving consumers the right to use the devices they have paid for, with any carrier, and changes an ill -considered provision in the Copyright Act that makes it a crime to break a digital locks to protect items where the true value does not lie in the copyright itself.

Consumers would therefore be allowed to unlock their cell phones to switch carriers, ensuring that once they have purchased the phone and any contract periods associated with the phone have expired, they have the freedom to select the carrier that best serves their needs.

The last section of the bill also highlights a concern with the trend of U.S. free trade agreements to further entrench current U.S. law (or, in some cases seeks to change what is in U.S. law). Previous bilateral trade agreements between the U.S. and other countries, as well as the currently negotiated plurilateral Trans-Pacific Partnership Agreement include restrictive language regarding exemptions to anti-circumvention provisions. The last section of the Unlocking Technology Act, thus directs the President to ensure that such trade agreements reflect the changes made by the bill.