

# The Law of Reversal

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## Topics:

1. Legal Traps for Reverse Engineering
2. Jailbreaking the iPhone
3. Online Gaming
4. Lessons and Strategies



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# Work We Do

Coders' Rights

DRM

Free Speech

Fair Use

Privacy

# The Law of Reverse Engine

# The Law of Reverse Engineering

install & use software  
(license agreements)

make copies of code created by others

bypass avoid access control  
(DMCA)

access networked computer  
(CFAA)

# The Law of Reverse Engineering

[things we're not talking about today]

patents

trade secrets

# Example of Jailbreaking



app developers

jailbreak developers  
(iPhone Dev Team)

end users

# Jailbreaking and Licenses

SDK License

EULA

# Jailbreaking and Licenses

What does it say about RE?

Are these enforceable contracts?

Did you click “I agree”?

Is there a ban on reversing enforceability?

What's your exposure for breach?

# Jailbreaking and Licenses

Reverse engineering terms upheld

Bowers v. Bay State

Davidson & Associates v. Jung (B)

But then there's Europe...

# Jailbreaking and ©

Why © is scarier than contr

Statutory damages

Injunctions

Criminal penalties

# Jailbreaking and ©

Exclusive rights of © owner

Reproduction

Distribution

Derivative Works

Public Performance

Public Display

# Jailbreaking and ©

Defenses for reverse engineering

Section 107: Fair use

Section 117

# Jailbreaking and ©

## Fair Use

reverse engineering is required to gain function and ideas, any intermediate copy part of reverse engineering are fair use.

be sure that you are legitimately in possession of software, and do not copy code in your file



# Jailbreaking and ©

## Section 117

The **owner** of a copy of a computer program may copy or **adapt** that program as “an essential part of the utilization of the computer program on a computer machine.”

# Jailbreaking and ©

## Section 117

Are you the “owner” of the software?

Is this an “adaptation” created as an “essential” part of using the software?

# Jailbreaking and DMCA

Section 1201 Prohibitions:

Acts of Circumvention

Trafficking in Circumvention T

# Jailbreaking and DMCA

No person shall circumvent a technology that effectively controls access to a work by copyright.

No trafficking in tools that are primarily valuable or marketed for such circum

# Jailbreaking and DMCA

Remedies:

Statutory damages

Injunctions

Criminal penalties (if commercial)

# Jailbreaking and DMCA

Technological measure?

DVD encryption  
protocol encryption  
authentication handshakes  
“chain of trust” code signing?  
code obfuscation?  
undocumented protocols?

# Jailbreaking and DMCA

Statutory exceptions:

Reverse engineering for interoperability

Security testing

Encryption research

Law enforcement

[also must be a nexus with infringement]

# Jailbreaking and DMCA

1201(f): Reverse engineering for interoperability

... a person who has lawfully obtained the right to use a copy of a computer program may circumvent ... a technological measure for the purpose of identifying and analyzing those elements of the program that are necessary to achieve interoperability with an independently created computer program or other programs, and that have not previously been made available to the person engaging in the circumvention, to the extent any such acts of identification and



# Jailbreaking and DMCA

1201(f): Reverse engineering for interoperability

lawfully obtained

for the sole purpose of identifying and analyzing

to achieve interoperability

for program-to-program interoperability

information not previously been readily available

not infringing (i.e., fair use)

# Jailbreaking and DMCA

Application to Jailbreaking:

Jailbreaking tool developers

iPhone owners?

# DMCA Triennial Rule-Ma

<http://www.copyright.gov/12>

# Proposed Jailbreaking Exce

Computer programs that enable wire  
telephone handsets to execute lawfu  
obtained software applications, whe  
circumvention is accomplished for th  
purpose of enabling interoperability  
applications with computer program  
telephone handset.

Special issues raised by  
networked applications

# Online Gaming

many of the same issues as jailbrea  
there's a network

# Applied to online game

- Blizzard v. In Game Dollar
- Bragg v. Linden Labs
- Other examples

CFAA



# Unauthorized Access: 1030

Whoever ... accesses without authorization information that exceeds authorized access...and thereby

- (A) information from a financial institution, credit card issuer or consumer reporting agency;
- (B) information from any department or agency of the United States; or
- (C) information from any protected computer.

# Causes Damage: 1030(a)

Whoever ... (A) knowingly causes the transmission of a program, information, code, or command, and as a result of such conduct, intentionally causes damage without authorization, to a protected computer

# Causes Damage: 1030(a)

B) intentionally accesses a protected computer without authorization, and as a result of such conduct, recklessly causes damage;

C) intentionally accesses a protected computer without authorization, and as a result of such conduct, causes damage; and

# Damage

means any impairment to the integrity or availability of data, a program, a system, or information

# What You Can Do: Strategies & Lessons

Avoid clicking through E

Think before copy  
Copy no more than need  
(clean room)

f there's encryption or obfu  
re-read 1201(f)



# Off-shoring and its limits

The importance of "atmosph

Questions?