

## SECTION-BY-SECTION SUMMARY

### Sec. 1 – Short title

The Unlocking Technology Act of 2013.

### Sec. 2 – Focusing circumvention prohibition on copyright infringement

**Circumvention for non-infringing uses permitted:** This section modifies 17 U.S.C. 1201(a)(1) to prohibit circumventing a technological measure that controls access to a work protected by copyright – if the circumvention infringes or facilitates infringement of the copyright. The section makes clear that it is not a violation to circumvent a technological measure if the purpose of the circumvention is to use a work in a manner that is not an infringement of copyright.

*Current law: 17 U.S.C. 1201(a)(1) prohibits circumventing technological measures that effectively control access to works protected by copyright – regardless of whether the circumvention infringes on copyright. Limited exemptions to the prohibition include nonprofit libraries and educational institutions, law enforcement and intelligence activities, reverse engineering for interoperability, encryption research, protecting personally identifying information, and security testing. The Librarian of Congress may create, via rulemaking, additional three-year exemptions from this restriction for certain classes of works – these exemptions included unlocking mobile phones to switch carrier networks until the expiration of that exemption in early 2013, which the Librarian chose not to renew. Violations carry civil and criminal penalties, including fines and imprisonment, under 17 U.S.C. 1203-1204.*

**Circumvention tools for non-infringing uses permitted:** This section modifies 17 U.S.C. 1201(a)(2) to prohibit manufacturing, providing, or trafficking in technologies, products, or services that are 1) primarily designed for the purpose of facilitating copyright infringement by circumventing technological access measures, 2) have only limited commercial purpose or use other than to facilitate infringement by circumventing technological access measures, or 3) are marketed for use in infringing copyright by circumventing technological access measures. The section makes clear that it is not a violation for a person to use, manufacture, provide, or traffic in a technology, product, or service that is primarily designed for facilitating non-infringing uses of copyrighted works, unless it is the intent of the person to infringe or facilitate infringement of copyright.

*Current law: 17 U.S.C. 1201(a)(2) prohibits manufacturing, importing, providing, or trafficking in technologies, products, or services that are primarily designed circumvent technological access measures, 2) have limited commercial purpose or use other than to circumvent*

*technological access measures, or 3) are marketed for use in circumventing technological access measures – regardless of whether the technology, products, or services can enable non-infringing uses of a protected work. Violations carry civil and criminal penalties, including fines and imprisonment, under 17 U.S.C. 1203-1204.*

**Report Required:** This section requires the Assistant Secretary for Communications and Information of the Dept. of Commerce to issue a report on the impact of 17 U.S.C. 1201 on consumer choice, competition, and free flow of information. The report must be completed within nine months of enactment and delivered to the House Judiciary Committee, the House Energy & Commerce Committee, the Senate Judiciary Committee, and the Senate Commerce, Science, & Transportation Committee.

### **Sec. 3 – Network Switching – “Unlocking” – Not Infringement**

This section adds to the existing limitation on exclusive rights for computer programs under 17 U.S.C. 117. The section makes clear that it is not copyright infringement to copy (such as by loading a RAM copy on a mobile device) or adapt the software or firmware of a mobile communications device (such as cell phones or tablets) for the sole purpose of enabling the device to connect to a wireless communications network. The copying or adapting must be initiated by or with the consent of the owners device or the owner’s agent (enabling the owner of a mobile communications device to hire another individual to perform the network switching service), and the device owner or the owner’s agent must be in legal possession of the device. Prior to switching to another wireless communications network, the owner of the device must also have the consent of the authorized operator of that network.

*Current law: Some have argued that it is a violation of copyright to switch networks and then access or load a RAM copy of software or firmware on a mobile device – necessary for the mobile device to function normally – if the device’s user agreement forbids switching networks. The theory is that by switching networks and violating the user agreement, the user is then accessing or loading an unauthorized – and thus potentially infringing – reproduction of the software the next time the user turns on the mobile device. The merits of this theory are unclear because current law is not entirely settled in this area. Adding a narrow provision on network switching to 17 U.S.C. 117, which currently includes certain exceptions to copyright infringement for copying and adapting of computer programs, resolves this issue.*

### **Sec. 4 – Harmonization of Trade Agreements**

This section requires the President to take the necessary steps to secure modifications to applicable trade agreements to ensure such agreements are consistent with the provisions of this Act.

*Current law: Several international trade agreements to which the U.S. is a party mirror (or are more narrow than) existing U.S. law. Some of these trade agreements contain identical or similar language to 17 U.S.C. 1201, which The Unlocking Technology Act would change. See, for example, Article 18.4(7)(a) of the Korea-U.S. Free Trade Agreement. However, Congress is not barred from enacting legislation that differs from free trade agreements.*

### **Sec. 5 – Effective Date**

The Act – save for Sec. 4 – takes effect 9 months after enactment.

END