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Unofficial Software Incurs Apple's Wrath

By JENNA WORTHAM
Published: May 12, 2009

The [iPhone](#) can teach its users how to perform CPR, mix a White Russian and allow them identify any song playing on the radio.

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But for some owners of the [Apple](#) touch-screen device, the 35,000-plus applications lining the digital shelves of Apple's App Store are not enough.

If you want to use your iPhone as a video camera, send a photo message or hook it up to your laptop to connect to the Internet, there's no app for that.

Or at least, no official app.

Through the efforts of developers and hobbyists, the Web is teeming with unauthorized applications for the iPhone and the [iPod Touch](#) (which does everything that the iPhone does except make phone calls and incur a monthly bill from [AT&T](#)), and there are even some independent online application stores.

However, in order to use these programs, iPhone owners have to "jailbreak" their device — downloading a bit of software that bypasses Apple's restrictions and allows the installation of unsanctioned third-party programs.

The growing popularity of jailbreaking has set up a legal battle between Apple, which says it has the right to regulate what can go on an iPhone, and the users and developers who want to customize their phones as they see fit.

Jailbreaking is different from unlocking an iPhone, in which users modify the software so the phone can be used on unauthorized wireless carriers. For some iPhone hobbyists, like Mark Janke, jailbreaking is akin to customizing a fancy car — it simply allows owners to personalize the look of their devices, turning their phones into a brag-worthy accessory and status symbol.

"You can modify your phone and say, 'Hey, look what I did,'" said Mr. Janke, who runs a forum called [Hack That Phone](#), which walks iPhone owners through the jailbreaking process in several languages, including Swedish and Persian. "It opens up an amazing world of goodies."

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But according to Apple, jailbreaking is illegal and a breach of the Digital Millennium Copyright Act. "These modifications not only violate the warranty, they also cause the iPhone to become unstable and not work reliably," said Natalie Kerris, a spokeswoman for Apple.

In a [legal filing](#) with the United States Copyright Office last year, Apple says jailbroken iPhones rely on modified versions of Apple's operating software that infringe on its copyrights.

In addition, the company says jailbreaking encourages the piracy of approved iPhone applications and is an expensive burden. "Apple's iPhone support department has received literally millions of reported incidents of software that crashes on jailbroken iPhones," the document says.

Apple filed its brief in response to the Electronic Frontier Foundation's request that the copyright office recognize an exemption to the digital copyright act that would permit jailbreaking of iPhones and other devices. The copyright office is expected to rule on the issue by October.

Jailbreaking your own iPhone does not infringe on any copyright, and the tools that help iPhone owners modify their devices do not distribute anything that belongs to Apple, said Fred von Lohmann, a senior staff lawyer with the Electronic Frontier Foundation, a nonprofit group that advocates more openness on the Internet. "In our view, consumers are allowed to adapt software for their own personal use," he said.

For developers, bypassing Apple's lengthy and opaque approval process allows them to get their software out quickly and on their own terms. Most iPhone owners who jailbreak their phones do so to change the interface of the iPhone or add simple features and functions that are not available through official channels, said Jay Freeman, who operates [Cydia](#), a popular repository for thousands of third-party iPhone applications and modifications.

For example, Mr. Freeman's site offers two popular applications that he wrote: Cycorder, a free program that allows iPhones to record video, and Cyntact, a \$1 program that adds profile pictures to the iPhone's address book.

Another developer offers a \$9.99 application, iPhoneModem, through Cydia that permits the iPhone to share its Internet connection with a computer, a practice known as tethering, which cellular carriers frown upon.

Mr. Freeman estimates that his platform for apps has been installed on about 2.3 million iPhones and iPod Touch devices. In April, Apple said it had sold 37 million iPhones and iPod Touches to date.

To counter jailbreaking, Apple releases updates for the operating system software that can render jailbroken phones useless. But the company's efforts amount to an elaborate game of whack-a-mole as rogue programmers quickly counter their efforts with their own software updates.

So far, the company has not gone after any specific developers or Web sites that assist people in jailbreaking their iPhones, said Mr. von Lohmann, but given Apple's penchant for exerting control over its products, it could.

The foundation argues that Apple's real goal is to limit competition with its App Store, which has been wildly successful since Apple opened its digital doors in July. Since then,

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more than a billion apps, both free and paid, have been downloaded. Gene Munster, a senior research analyst at the Piper Jaffray investment firm, estimates that the App Store will have generated roughly \$617 million in revenue by the end of 2009.

Mario Ciabarra, the operator of a smaller application shop called [Rock Your Phone](#), worries that Apple could quash competitors by simply including the more popular jailbroken iPhone modifications in the third version of the iPhone operating system, due out this summer.

Mr. Ciabarra, whose site offers nine applications for download through a platform he developed himself, says his products have had half a million downloads since mid-March.

"There's no reason Apple couldn't offer the products we're offering," Mr. Ciabarra said. Like Apple, Mr. Freeman and Mr. Ciabarra take a commission of up to 30 percent from developers selling software through their stores.

In addition to commissions, Mr. Freeman says he makes money from selling applications he created, advertisements on the site, and sponsorships from developers who want their applications featured on Cydia's home page. All together, he said he earns enough from the site to support himself.

Mr. Freeman said he was not worried about the competition from Apple or the potential ramifications of operating an unsanctioned software platform. "I don't even understand why they're trying to fight an entire community," he said.

William H. Greene, a professor of economics at [New York University](#) who studies digital entertainment, said most jailbreaking software is free and does not hurt sales of the iPhone. Some applications available through the independent channels had been rejected by Apple for inclusion in its store. "It's hard to see where Apple is being harmed by this," he said.

Apple would have more leverage with its copyright claims if it could prove that jailbreaking is harming its business. "If the jailbreaker, the individual phone owner, were somehow trying to profit, then they might have a case," Mr. Greene said. Apple is also well within its rights to crack down on pirated copies of legitimate applications, he said.

Mr. Ciabarra, who writes unauthorized apps because the iPhone is "too fun to pass up playing with," sympathizes with Apple's position — to a point.

"They're worried about malware being distributed and third-party developers interfering with the stability of their product," he said. "We just feel users should be able to decide for themselves if they want to deal with that."

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