

# Good News is Bustin' Out

By Reg P. Wydeven  
September 11, 2010

As many of my friends know, I love movies. I recently watched 'Cool Hand Luke' with my dad, and it was a great film about Paul Newman's repeated attempts to escape from prison. The movie made me think of some of my other favorite prison escape flicks, such as Harrison Ford's 'The Fugitive', Clint Eastwood's 'Escape from Alcatraz', and Tim Robbins' 'The Shawshank Redemption.'

It is, in fact, a criminal offense to attempt to escape from prison. That's why Sylvester Stallone's character, Frank Leone, gets another 10 years added on to his sentence when he tried to break out of jail to save his girlfriend from the cronies of the crooked Warden Drumgoole, played by Donald Sutherland in the movie 'Lockup'.

So after watching all of these prison movies, I was absolutely shocked to learn that jailbreaking is now no longer illegal.

Intrigued, I did a little more research. It turns out the decision was issued by the U.S. Copyright Office, which is operated by the Library of Congress. Curious. I would have thought the ruling would have been made by the Department of Justice.

On top of that, people are using their cell phones to jailbreak. As a student of prison escape movies, I always thought you needed a file hidden in a birthday cake to break out. It turns out, however, that jailbreaking is actually the modification of the software that comes with cell phones, particularly Apple's iPhone, that is designed to not be changed.

Apple is a vanguard company, consistently releasing cool and innovative products like the iPod, iPad and iPhone. Competitors were quick to release similar MP3 players, tablet computers and smartphones, but they were typically not as user-friendly, effective or as cool as their Apple counterparts.

Knowing this, Apple holds the reins tightly when it comes to controlling its products. Purchasers of an iPhone, for example, are required to use AT&T as their carrier. In addition, iPhone users can only purchase applications for their phones from Apple's App Store.

Some iPhone users want to have a different carrier, like T-Mobile, or use applications not available in the App Store, such as Google Voice. Therefore, they resort to hacking their phones to stray from Apple, the process known as "jailbreaking." Apple has vehemently opposed jailbreaking, warning customers that installing unauthorized apps may damage their iPhones, invalidate warranties and not only violates the license agreement but also the federal Digital Millennium Copyright Act. Apple claims the restrictions protect their customers by maintaining a high-quality user experience and weeding out malware. Cynics claim the company is trying to monopolize profits.

The Electronic Frontier Foundation formally applied to the Copyright Office to approve jailbreaking, claiming as many as 1 million users may have jailbroken their iPhones. The Copyright Office complied, ruling that jailbreaking is "fair use," and therefore not a copyright violation.

Because of the ruling, jailbreakers can no longer be sued by Apple for copyright infringement for downloading apps outside of the App Store. However, they can still get into trouble for violating their license agreement with Apple. It is unlikely, though, that Apple would go through the time and expense of a lawsuit to stop someone. It is also still illegal to market tools that help people hack their phones.

Thankfully, my cell phone that is mounted to my dashboard and has a cord attached to the receiver doesn't have apps, so I should be safe no matter what.

*This article originally appeared in the Appleton Post-Crescent newspaper and is reprinted with the permission of Gannett Co., Inc. © 2010 McCarty Law LLP. All rights reserved.*