



October 13, 2009

Herb Foster
Manager, Business Services

Mr. Bruce Gieseeman
Counsel, Education Technology Group.

Texas Instruments
7800 Banner Drive
Dallas, TX 75251

Via fax to (972) 917-1795 and email to <h-foster@ti.com>

**Re: Texas Instruments' Claim of a 17 U.S.C. Section 1201 violation by
Brandon Wilson at www.brandonw.net**

Dear Messrs. Foster and Gieseeman:

I represent Brandon Wilson, Tom Cross and Duncan Smith.

Mr. Wilson blogs at <www.brandonw.net>. On July 31, 2009, Mr. Wilson posted an entry entitled "83+ OS signing key cracked!". Mr. Cross blogs at <memestreams.net>. Mr. Cross posted an article on August 17, 2009 entitled "TI-83 Plus OS Signing Key Cracked - ticalc.org". Mr. Smith is a Texas Instruments' calculator hobbyist. On September 21, 2009, Mr. Smith posted a page at <<http://diomedes.phear.cc/~chronomex/>> entitled "ti signing keys".

After receiving your demand letters of August 27, 2009 (Wilson and Cross) and September 21, 2009 (Smith) claiming that the content of their posts violated the anti-circumvention provisions of the DMCA, and lacking immediate access to legal counsel to evaluate your claims, Messrs. Wilson, Cross and Smith each independently removed their post.

Contrary to the assertions in your demand letter, however, the messages at issue do not violate the DMCA. Accordingly, in the absence of further evidence in support of your allegations, each of our clients will be reposting his communication in its original format on October 26, 2009.

As you may know, on or around July 30, 2009, Benjamin Moody announced on the United-TI web forum that he had derived the operating system ("OS") signing key for the TI 83 Plus calculator. After the announcement, other TI calculator hobbyists successfully derived the private keys for other TI calculator models. TI uses the public/private key pair to perform a signature check on its calculators in an effort to restrict the devices to running only TI-approved operating systems. Hobbyists who develop their own OS

software for their TI calculators need to use the same signing key in order to efficiently install and use their custom software. There are many reasons a calculator owner would want to install and run alternate operating systems on their calculators, including to add new functions to the devices. TICalc.org, a repository of software for TI calculators, lists three alternative operating systems that run on the TI 83 Plus calculator alone. See <http://www.ticalc.org/pub/83plus/os/>. To the best of our clients' knowledge, TI has no copyright or other ownership interest in these alternative operating systems written by hobbyists, nor do these original works infringe on any TI copyrights.

After reading that the 83 Plus key had been discovered, our clients separately and individually authored the webpages and blog posts addressed in your demand letters. Each post consisted of analysis and commentary. Mr. Wilson's and Mr. Smith's messages contained the RSA factorization of the 83 Plus OS's public key derived by Moody, essentially two large prime numbers. Mr. Cross's post did not contain those numbers, but it did substantiate the comments he made in the post by linking to a discussion forum where the key had been posted along with other information. Each of these messages is outside the ambit of the anti-circumvention provisions of the DMCA and protected by the First Amendment. Nothing contained in any of the posts constitutes a "technology, product, service, device, component, or part thereof" within the meaning of 17 U.S.C. 1201(b)(2).

Moreover, the signing keys do not "effectively control access" to any of TI's copyrighted works within the meaning of the DMCA. The owner of the calculator already has unfettered access to the operating system on the TI 83 Plus calculator, as the software resides in unencrypted format in the calculator's memory. In addition, TI makes the software freely available in unencrypted form on its own website. Accordingly, the signing keys do not constitute circumvention tools within the meaning of the DMCA. See *Lexmark Intern., Inc. v. Static Control Components, Inc.*, 387 F.3d 522, 546 (6th Cir. 2004) (No access control when "[a]nyone who buys a Lexmark printer may read the literal code ... directly from the printer memory, with or without the benefit of the authentication sequence, and the data from the program may be translated into readable source code after which copies may be freely distributed.").

In addition, your demand letter fails to identify any nexus between the distribution of the signing keys and any potential copyright infringement, as required under the DMCA. See *Storage Technology Corp. v. Custom Hardware*, 421 F.3d 1307, 1319 (Fed. Cir. 2005); *Chamberlain Group, Inc. v. Skylink Technologies, Inc.*, 381 F.3d 1178, 1201 (Fed. Cir. 2004). The TI OS software is made freely available on TI's own website. The signing keys do not contribute in any way to any infringement of TI's code. Rather, the signing keys simply prevent the owner of a TI calculator from using alternate OS software of their choice, an activity that does not infringe any TI copyright interest.

Finally, the derivation and distribution of the signing keys fall within the DMCA's reverse engineering exception, 17 U.S.C. 1201(f). That exception permits individuals to circumvent technological measures and distribute circumvention tools for the purpose of enabling interoperability of an independently created computer program with other

October 13, 2009

Page 3 of 3

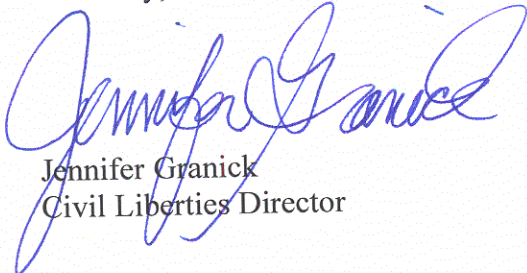
programs. As explained above, the signing keys enable independently created OS software to interoperate with the factory issued TI calculator.

In summary, contrary to your demand letter, it appears that nothing in either Mr. Wilson's, Mr. Cross's or Mr. Smith's posting violates the DMCA. Accordingly, in the absence of further evidence in support of your allegations, each of our clients independently intends to restore his original message on October 26, 2009.

This letter also puts you on notice that your demand letter, to the extent it purports to invoke the DMCA's "notice-and-takedown" procedures set forth in 17 U.S.C. § 512(c)(3), constitutes a misrepresentation that may give rise to liability under 17 U.S.C. § 512(f), including attorneys' fees and costs. Contrary to the requirements of § 512(c)(3), your demand letter does not appear to be directed to any materials that infringe any copyrights owned by TI. Neither TI, nor anyone else, owns any copyright in the signing keys (i.e., two numbers) at issue here.

Please direct any future correspondence in connection with this matter to me. Nothing contained in this letter constitutes an express or implied waiver of any of our clients' rights, remedies, or defenses.

Sincerely,



Jennifer Granick
Civil Liberties Director