

Before the
U.S. COPYRIGHT OFFICE
LIBRARY OF CONGRESS

**In the matter of Exemption to Prohibition on Circumvention
of Copyright Protection Systems for Access Control Technologies**

Docket No. RM 2008-8

**Response of Apple Inc. to Questions Submitted by the Copyright Office
Concerning Exemptions 5A and 11A (Class #1)**

Submitted on behalf of Apple Inc. by:
David L. Hayes
Fenwick & West LLP
555 California St., 12th Floor
San Francisco, CA 94104
(Outside counsel to Apple Inc.)

Apple Inc. (“Apple”) provides the following responses to the questions submitted by the Copyright Office on June 23, 2009 relating to proposed exemptions 5A and 11A (Class #1) concerning “jailbreaking” of smart phones.

1. *Does “jailbreaking” violate a license agreement between Apple and the purchaser of an iPhone? If so, please explain what provision it violates and whether “jailbreaking” constitutes copyright infringement?*

Response:

Jailbreaking Violates the Software License Agreement Covering the iPhone Software

Jailbreaking does violate a license agreement between Apple and the purchaser of an iPhone. All purchasers of iPhones must accept the terms and conditions of the iPhone Software License Agreement (“IPSLA”) at the time of purchase of the iPhone (and any later updates of the software). The IPSLA governs use of the software resident on or included with the iPhone and contains a number of conditions and restrictions governing such use. There have been four major versions of the IPSLA: ver. 1.0, ver. 1.1.1, ver. 2.0, and ver. 3.0. Copies of each of these versions of the IPSLA are attached to this response as Attachments A-1 through A-4. Section 2(c) of all versions of the IPSLA provides that the licensee may not “modify, or create derivative works of the iPhone Software” and that any “attempt to do so is a violation of the rights of Apple and its licensors of the iPhone Software.”

As explained at pp. 11-13 of Apple's response (the "Apple Response") in opposition to the "jailbreaking" exemption proposed by the Electronic Frontier Foundation ("EFF"), current jailbreaking techniques now in widespread use create unauthorized modifications to the copyrighted bootloader and operating system ("OS") software of the iPhone. Indeed, on page 7 of its submission proposing the jailbreaking exemption, proponent EFF admits that "decryption and modification of the iPhone firmware appears to be necessary for any jailbreak technique to succeed on a persistent basis." The modifications to the bootloader and the OS that the user makes in the course of jailbreaking – which should really be referred to by the more accurate label of "hacking" – therefore constitute a breach the IPSLA. The "Termination" section of the IPSLA (Section 5 of ver. 1.0 and Section 6 of vers. 1.1.1, 2.0, and 3.0) provides that the licensee's rights under the IPSLA terminate automatically without notice from Apple if the licensee fails to comply with any term(s) of the IPSLA, and upon termination of the license, the licensee must cease all use of the iPhone Software and updates thereto. Therefore, a user's continued use of the modified iPhone Software in a jailbroken phone is a further breach of the IPSLA.

Jailbreaking Constitutes Copyright Infringement

Jailbreaking constitutes copyright infringement. Because jailbreaking involves unauthorized modifications to Apple's copyrighted bootloader and OS programs, it is a violation of 17 U.S.C. § 106(1) & (2), unless such modifications are either within the scope of the license granted under the IPSLA (which they are not), or are covered by the statutory rights under 17 U.S.C. § 117 or by the fair use doctrine (again, which they are not, as detailed below).

The modifications to the bootloader and the OS are not within the license rights granted under the IPSLA, because, as noted, that agreement flatly prohibits the modification of, or creation of derivative works based upon, the iPhone Software. Nor is the initial act of jailbreaking the only act of copyright infringement that users of jailbroken iPhones may need to engage in. Further modifications (hacking) of the OS are often necessary to enable certain kinds of applications to run even after the basic jailbreaking is accomplished. Such modifications are infringing and, as described in further detail in the Apple Response, can give rise to additional functional problems on the iPhone, such as interfering with operation of certain Application Programming Interfaces (APIs) or system calls, or creating incompatibilities with other updated components of the OS. Thus, the initial infringing acts on the OS often lead to other infringing acts.

Section 117 Is Inapplicable, and in any Event Jailbreaking Activities Do Not Fall Within Its Ambit

Section 117 is simply not applicable to, and in any event does not permit, the unauthorized modifications to the bootloader and OS that are made in the course of jailbreaking the iPhone.

1. Section 117 is inapplicable at the threshold because the IPSLA prohibits modification and the licensee is not the "owner" of the copy of the iPhone Software.

Seven of the eight courts to examine the issue have held the Final Report of the National Commission on New Technological Uses of Copyrighted Works (1978) (the “CONTU Report”) to be the legislative history of Section 117, or at the very least indicative of Congressional intent.¹ In recommending that the copyright statute be amended to insert Section 117, the commissioners noted in the CONTU Report that “Should proprietors feel strongly that they do not want rightful possessor of copies of their programs to prepare such adaptations, they could, of course, make such desires a contractual matter.” Thus, since the very origin of Section 117 rights, Congress has contemplated that they could be negated by contract, and Apple has consistently done so in every version of the IPLSA. Accordingly, Section 117 is not available at all as a defense to jailbreaking activities by the iPhone software licensee.

In addition, Section 117 rights are applicable only to the “owner” of a copy of a computer program. At least three opinions by the Ninth Circuit have held that licensees of a computer program do not “own” their copy of the program and therefore are not entitled to Section 117 rights.² The most recent of these decisions from 2006, *Wall Data Inc. v. Los Angeles County Sheriff's Dept.*,³ provided a two-part test for determining whether the acquirer of a copy of a software program is a licensee or an owner: if the copyright holder (1) makes clear that it is granting a license to the copy of the software, and (2) imposes significant restrictions on the use or transfer of the copy, then the transaction is a license, not a sale, and the purchaser of the copy is a licensee, not an “owner” within the meaning of Section 117.⁴ Under this test, a district court in the Ninth Circuit recently held that no Section 117 rights existed where a license agreement provided that title to all copies of software remained with the copyright holder, the software could not be transferred except by transferring the original media along with the original packaging and manuals, and the transferee of the software had to agree to the terms of the license.⁵

¹ See *Krause v. Titleserv*, 402 F.3d 119, 128 (2d Cir. 2005); *Aymes v. Bonelli*, 47 F.3d 23, 26-27 (2d Cir. 1995); *Sega Enterprises Ltd. v. Accolade, Inc.*, 977 F.2d 1510, 1520 n.5 (9th Cir. 1992); *Vault Corp. v. Quaid Software Ltd.*, 847 F.2d 255, 260-61 (5th Cir. 1988); *Apple Computer, Inc. v. Franklin Computer Corp.*, 714 F.2d 1240, 1252 (3d Cir. 1983), *cert. denied*, 464 U.S. 1033 (1984); *Foresight Resources Corp. v. Pfortmiller*, 719 F. Supp. 1006, 1009 (D. Kan. 1989); *Apple Computer, Inc. v. Formula Int'l, Inc.*, 594 F. Supp. 617, 621 (C.D. Cal. 1984). *But see Lotus Dev. Corp. v. Borland Int'l, Inc.*, 788 F. Supp. 78, 93 (D. Mass. 1992), *rev'd on other grounds*, 49 F.3d 807 (1st Cir. 1995), *aff'd by an equally divided court*, 116 S. Ct. 804 (1996).

² *Wall Data Inc. v. Los Angeles County Sheriff's Dept.*, 447 F.3d 769, 85 (9th Cir. 2006) (“[I]f a software developer retains ownership of every copy of software, and merely licenses the use of those copies, § 117 does not apply.”); *Triad Sys. Corp. v. S.E. Express Co.*, 64 F.3d 1330, 1333 (9th Cir. 1995); *MAI Sys. Corp. v. Peak Computer, Inc.*, 991 F.2d 511, 518 n.5 (9th Cir. 1993).

³ 447 F.3d 769 (9th Cir. 2006).

⁴ *Id.* at 785.

⁵ *MDY Industries, LLC v. Blizzard Entertainment, Inc.*, 2008 U.S. Dist. LEXIS 53988 at *26-28 (D. Ariz. July 14, 2008).

Apple's IPSLA contains virtually identical provisions. Specifically, Section 1 of vers. 1.0, 1.1.1, and 2.0 of the IPSLA all state, "You own the media on which the iPhone Software is recorded but Apple and/or Apple's licensor(s) retain ownership of the iPhone software itself." Section 1 of ver. 3.0 of the IPSLA simply states, "Apple and its licensors retain ownership of the iPhone Software itself and reserve all rights not expressly granted to you." Section 3(a) of all versions of the IPSLA further provides that the licensee may not rent, lease, lend, or sublicense the iPhone Software (versions 2.0 and 3.0 also prohibit the sale or redistribution of the software), subject to a limited exception described in the response to question 4 below. Under the Ninth Circuit authorities, these restrictions are sufficient to make iPhone users licensees, not owners, of the copies of software in the iPhone (including the bootloader and OS), and Section 117 is therefore inapplicable.

The Second Circuit and Federal Circuit have adopted somewhat more liberal tests under Section 117. Instead of adopting the Ninth Circuit's characterization of all licensees as non-owners, these Circuits look to whether the licensee has sufficient incidents of ownership in the particular transaction at hand – including the presence or absence of formal title to the copy, as well as restrictions on use and transfer – to be considered the "owner" of the copy for purposes of Section 117.⁶ Even under this more liberal approach, Section 117 is inapplicable here. The Federal Circuit concluded that, where the license agreement (i) provided that the licensor retained title to copies of the software, (ii) limited the licensee's right to transfer copies of the software and to disclose the details of it to third parties, and (iii) limited the hardware on which the software could run, the licensee did not have sufficient incidents of ownership to have Section 117 rights.⁷ In Apple's case, as noted, Apple's IPSLA provides that the licensee does not own title to the copy of the iPhone software and imposes restrictions on transfer. In addition, all versions of the IPSLA impose similar restrictions on the hardware with which the software may be used, limiting its use to a single Apple-branded iPhone and prohibiting making the software available over a network where it could be used by multiple devices at the same time.⁸

Similarly, the factual predicates and indicia of ownership that led the Second Circuit to conclude in *Krause v. Titleserv*⁹ that Titleserv was the "owner" of its copy of the software that Krause had developed for Titleserv¹⁰ are strikingly absent here. For instance:

- Titleserv paid Krause substantial consideration to develop the programs for its sole benefit. By contrast, the iPhone user has not paid Apple to develop the iPhone software for its sole benefit.
- Krause customized the software to serve Titleserv's operations. By contrast, Apple does not customize the iPhone software to serve a particular iPhone user's operations

⁶ See *Krause v. Titleserv, Inc.*, 402 F.3d 119, 123-24 (2d Cir. 2005); *DSC Communications Corp. v. Pulse Communications, Inc.*, 170 F.3d 1354, 1360-61 (Fed. Cir. 1999).

⁷ *DSC Communications*, 170 F.3d at 1360-61.

⁸ IPSLA § 2(a).

⁹ *Krause v. Titleserv, Inc.*, 402 F.3d 119 (2d Cir. 2005).

¹⁰ See *id.* at 124.

or needs.

- Krause never reserved the right to repossess the copies used by Titleserv and agreed that Titleserv had the right to continue to possess and use the programs forever, regardless whether its relationship with Krause terminated. By contrast, the “Termination” section of the IPSLA (Section 5 of ver. 1 and Section 6 of vers. 1.1.1, 2.0, and 3.0) provides, “Your rights under this License will terminate automatically without notice from Apple if you fail to comply with any term(s) of this License. Upon the termination of the License, you shall cease all use of the iPhone Software.”

Under any of these authorities, iPhone users are licensees, not owners, of the copies of iPhone operating software, and Section 117 rights therefore do not apply. But even if the Copyright Office were to conclude that iPhone users might possibly qualify as “owners” under the more liberal tests of the Second or Federal Circuit, it is clear that such rights are not available as a matter of law to iPhone Software licensees under the Ninth Circuit’s test.¹¹ Therefore, at a minimum, given the existing split in authority concerning whether licensees can even have Section 117 rights *at all*, the Copyright Office cannot appropriately rely on Section 117 as a basis for concluding that unauthorized modifications to Apple’s bootloader and OS software made in the course of jailbreaking would be noninfringing. Proponents of an exemption bear a high burden of proof to show that the activities that would be permitted by the exemption are noninfringing under current law.¹² They must show that the current law is undisputed, and clear, in their favor. Given the current significant split of authority concerning applicability of Section 117 to licensees, the EFF simply cannot meet this burden – the courts, and not this rulemaking proceeding, are where any such matters must be raised.

2. Even if Section 117 were deemed applicable, jailbreaking falls outside of the permissible ambit of Section 117 rights.

Even if the Copyright Office were to deem Section 117 potentially applicable at all, the modifications made in the course of jailbreaking fall outside the permissible ambit of Section 117 rights for many reasons.

Section 117(a)(1) authorizes the adaptation of a computer program provided that it “is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner.” No adaptations are essential for either the bootloader or the OS to be utilized in conjunction with the iPhone. Both work properly for their

¹¹ And as noted in the discussion in the next subsection, even if an iPhone software licensee qualifies as an “owner” of its copy, the modifications made in the course of jailbreaking would not fall within the ambit of permissible adaptations under Section 117 rights because of the harm to the copyright owner such modifications cause and because they are used “in another manner” from that envisioned in the creation of the program.

¹² See Notice of Inquiry of Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 73 Fed. Reg. 58,073, 58,077 (Oct. 6, 2008) (a proponent bears the burden of proof to “establish that the prevented activity is, in fact, a noninfringing use under current law.”).

intended purposes on the iPhone hardware as originally delivered to the end user. Because the end user is licensed under Section 2(a) of the IPLA to use the iPhone software only on an Apple-labeled iPhone, and no other type of device, the end user has neither need nor legal right to adapt the bootloader or OS for use on other hardware.¹³ And as noted in the Apple Response, the iPhone works with over 35,000 (now over 50,000 as of the time of this submission) applications in the App Store, so it can hardly be said that adaptation of the iPhone software is essential to utilize it to run applications.

Moreover, in *Krause v. Titleserv*, the Second Circuit noted, “Whether a questioned use is a use *in another manner* seems to us to depend on the type of use envisioned in the creation of the program.”¹⁴ The modifications to the bootloader and the OS made to jailbreak a phone result in those programs being used in ways that were never envisioned in their creation. The iPhone bootloader and OS are each protected by two types of technological protection measures – encryption and signing. Both technological measures function as an access control (access to the software cannot be gained unless an authorized key is used to decrypt it and the sign check passes), whereas signing also functions as a copy control to prevent modification (if the software is modified in any way, the sign check will fail and the software will not be loaded). Modifications made to jailbreak a phone destroy its fundamental characteristic of operational integrity and security resulting from these technological protection measures, enabling jailbroken applications to execute that may make calls to undocumented APIs or that are otherwise non-compliant with Apple’s safety and functionality criteria for iPhone use, thereby creating the many harms that Apple’s representative Greg Joswiak testified about at the Copyright Office hearings in Palo Alto on May 1. Hacking the copyrighted bootloader and OS software is therefore use “in another manner” that was not envisioned in its creation and is not covered by Section 117(a).

To the extent that some court decisions have construed Section 117(a) to allow a user of a computer program to add new features to it, *Krause v. Titleserv* made clear that the right to add features can “only be exercised so long as they [do] not harm the interests of the copyright proprietor.”¹⁵ This standard cannot possibly be met here. As elaborated in the Apple Response at p. 16 and in Mr. Joswiak’s testimony, modifications to the bootloader and the OS that are made to jailbreak the iPhone create harms that significantly undermine the interests of the

¹³ One of the principal concerns motivating the CONTU Commission to recommend that Section 117 be revised to afford an adaptation right was the lack of standardization of hardware in the computer industry at the time and the concomitant need to adapt a computer program for the user’s particular computer hardware: “Because of a lack of complete standardization among programming languages and hardware in the computer industry, one who rightfully acquires a copy of a program frequently cannot use it without adapting it to that limited extent which will allow its use in the possessor’s computer.” CONTU Report at 13. No such need exists with respect to the iPhone.

¹⁴ *Krause v. Titleserv, Inc.*, 402 F.3d 119, 129 (2d Cir.), *cert. denied*, 126 S. Ct. 622 (2005) (emphasis in the original).

¹⁵ *Id.* (quoting CONTU Report at 13); *see also Weitzman v. Microcomputer Resources, Inc.*, 510 F. Supp. 2d 1098, 1109 (S.D. Fla. 2007) (right to add features under Section 117(a) is permitted so long as the modifications “do not disrupt [the] interests” of the copyright owner).

copyright creator and owner, Apple, and the value and integrity of the copyrighted work. Those modifications can readily cause serious problems in the operation of the iPhone – interference with safety, control and security functions of the device; interference with the proper operation of the APIs and system calls of the OS, causing application programs to fail to operate correctly on the iPhone; and failure of updates to the OS distributed by Apple to work correctly, which can also result in functional problems with the device, potentially causing it to fail to operate. The modifications also undermine Apple’s copyrighted work by adversely affecting Apple’s partners – creating instability and piracy risks for developers (whose own copyrighted works are put at significant risk), and network harm to iPhone cellular providers (discussed in greater detail below).

The point cannot be overstated that these harms to the operation of the iPhone device and to Apple’s third party relationships – and essentially to the entire iPhone ecosystem – are *all* fundamentally harms to Apple’s copyright interests; that is, harms to the value and integrity of the copyrighted work. They cannot be anything but. The value to Apple of the OS as a copyrighted work depends upon preservation of its operational integrity so that users have a consistently good experience with the product that carries and monetizes the OS, which of course is the iPhone. It also depends on ensuring third parties provide the services and functionality that help make the iPhone the revolutionary product it is. Hacking thus undermines the overall iPhone experience, diminishing Apple’s copyrights and, ultimately, the overall value of the iPhone and its ecosystem to consumers.

These harms alone are enough to reject the proposed exemption as anathema to the very goal and purpose of copyright laws and the DMCA. But Apple also is at risk of direct monetary harm. As described in the Apple Response and elaborated by Mr. Joswiak, functional problems that result from unauthorized modifications to the OS increase Apple’s support costs very substantially. Indeed, as Mr. Joswiak testified, the number one iPhone bug reported to Apple’s support department currently results from jailbroken phones. Software crashes caused by jailbroken phones are reported to Apple literally millions of times. Apple incurs very substantial expenses to investigate these problems to determine whether they result from problems in Apple’s own software, or result from jailbreaking. The kind of harm that flows to Apple as the copyright owner from jailbreaking simply was not present in the “modest alterations”¹⁶ that the court in *Krause v. Titleserv* found to be within Section 117 – specifically, changes to the software to add new clients, insert changed client addresses, and to add the ability to print checks and to allow customers limited direct access to their records.¹⁷

The Fair Use Doctrine Does Not Cover Jailbreaking Activities

The unauthorized modifications of the bootloader and OS software made in the course of jailbreaking are also not covered by the fair use doctrine. Looking at the four statutory fair use factors,¹⁸ although the use *per se* of the modified iPhone bootloader and OS on an individual

¹⁶ *Krause v. Titleserv*, 402 F.3d at 128.

¹⁷ *Id.* at 125.

¹⁸ The four nonexclusive statutory fair use factors prescribed in § 107 of the copyright statute are: (1) the purpose and character of the use, including whether such use is of a

handset is of a personal nature, it is not a transformative use, and because a jailbroken OS is often used to play pirated content, the act of jailbreaking should be considered of a commercial nature since it facilitates obtaining applications without paying fees for the them. Therefore, factor 1 weighs against fair use.¹⁹ Factors 2 and 3 also weigh against fair use because the copyrighted works at issue are highly creative and not factual in nature, and essentially the entire work is being copied.²⁰

Of most importance is factor 4,²¹ because the effect of the unauthorized modifications is to diminish the value of the copyrighted works to Apple. As elaborated in the Apple Response and summarized in the discussion of Section 117 above, jailbreaking the bootloader and the OS clearly diminishes the value of those copyrighted works directly by giving rise to a host of problems in the safety, security, operation and overall utility of the iPhone, and by substantially increasing Apple's costs to support the software.

The fact that Apple does not currently separately charge for the iPhone Software does not alter the analysis under factor 4. As noted in the Apple Response, the iPhone Software is not itself a standalone product; it is a part, and the technical center, of the iPhone mobile computing product. By itself, the OS may be of little value to consumers in that no consumer likely would purchase the OS as a stand-alone product. Likewise, by itself, the iPhone hardware (without an operating system or applications) may be of little value to consumers. And software applications on their own (without an operating system or a hardware device) may also be of little value. But when the complementary iPhone OS, iPhone hardware, and applications are combined, that combined product is highly valuable to consumers, as evidenced by its continued success in the marketplace. The utility of the iPhone to consumers cannot be denied and the OS is a central piece of the final product. It is the OS that provides the platform on which consumers can obtain useful applications and applications developers can obtain access to consumers. In the language of economics, the iPhone OS is a two-sided platform that links developers and users and is fueled by "inter-side" network effects.²²

commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work.

¹⁹ See, e.g., *Wall Data Inc. v. Los Angeles County Sheriff's Dept.*, 447 F.3d 769, 778-79 (9th Cir. 2006) (under the first fair use factor, use of software that saves the expense of purchasing a copy is a commercial use, and creating exact copies of software and putting them to the same purpose as the original software is not transformative).

²⁰ See *id.* at 779-80 (second factor weighed against fair use because copyright protects software and the computer program at issue cost millions of dollars to develop; third factor weighed against fair use in view of verbatim copying of the entire computer program).

²¹ *Harper & Row, Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, 566 (1985) (effect on the market for the copyrighted work is "undoubtedly the single most important element of fair use").

²² See, e.g., David S. Evans, Andrei Hagiu, and Richard Schmalensee, *Invisible Engines: How Software Platforms Drive Innovation and Transform Industries*, The MIT Press (2006); David S. Evans and Richard Schmalensee, "The Industrial Organization of Markets with Two-

In sum, the value of the OS software to the iPhone, and therefore to Apple, is that it enables the iPhone to function as a platform for the mobile computing experience that differentiates the iPhone from its many competitors. This, in turn, increases the value of Apple's iPhone copyrights and, again, overall consumer utility, making the iPhone a more attractive product to consumers. The value of the iPhone, and hence the software embedded in it, is substantially diminished when the integrity and functionality of that software is compromised by jailbreaking (hacking), when Apple is left to deal with the problems that ensue, and when the positive feedback loops enabled by the App Store and the iPhone Developer Program are compromised. Again, the burden of proof is on the EFF as the proponent of the jailbreaking exemption to establish that jailbreaking is a fair use. Given the evident harm to the value of Apple's copyrighted iPhone software that results from jailbreaking, the EFF cannot meet its burden.

2. *Does the iPhone licensing agreement distinguish between the ownership of the "computer program" and the ownership of the particular copy of the program that exists on the iPhone?*

Response:

Yes. Apple owns the bootloader and OS computer programs and the copyright and other intellectual property rights therein. In the IPSLA, Apple grants a limited license under its copyrights in those computer programs subject to the limitations and restrictions set forth in various provisions of the IPSLA, and Section 1 of all versions of the IPSLA provides that Apple reserves all rights in the computer programs not expressly granted to the licensee. Section 1 further provides that Apple also retains title to the particular copy of the software that exists on the iPhone. Specifically, Section 1 of vers. 1.0, 1.1.1, and 2.0 of the IPSLA all state, "You own the media on which the iPhone Software is recorded but Apple and/or Apple's licensor(s) retain ownership of the iPhone software itself." Section 1 of ver. 3.0 of the IPSLA simply states, "Apple and its licensors retain ownership of the iPhone Software itself" The term "iPhone Software" is defined in Section 1 to mean the specific physical copy of the software resident on the iPhone. Specifically:

- The term is defined in ver. 1.0 of the IPSLA as the "software (including Boot ROM code and other embedded software), documentation and any fonts that came with your iPhone, whether in read only memory, on any other media or in any other form."
- The term is defined in vers. 1.1.1 and 2.0 of the IPSLA as the "software (including Boot ROM code and other embedded software), documentation and any fonts that

Sided Platforms," *Competition Policy International*, 3(1): 151-179 (2007). These inter-side network effects mean that as more applications are available for the platform, the platform becomes more attractive to consumers and more consumers purchase it. As more consumers purchase the platform, the platform is more attractive to developers and more applications are written for it. This type of feedback effect is common in industries characterized by two-sided platforms.

came with your iPhone, as may be updated or replaced by software updates or system restore software provided by Apple, whether in read only memory, on any other media or in any other form.”

- The term is defined in ver. 3.0 of the IPSLA as the “software (including Boot ROM code and other embedded software), documentation, interfaces, content, fonts and any data that came with your iPhone (‘Original iPhone Software’), as may be updated or replaced by feature enhancements, software updates or system restore software provided by Apple (‘iPhone Software Updates’), whether in read only memory, on any other media or in any other form (the Original iPhone Software and iPhone Software Updates are collectively referred to as the ‘iPhone Software’).”

3. *Does any licensing agreement specifically place terms on “the copy” of the computer program, or do the license terms relate to the computer program generally?*

Response:

The IPSLA specifically places terms on the copy of the computer programs licensed under the IPSLA. As explained above, the term “iPhone Software” is defined in Section 1 of all versions of the IPSLA to mean the specific physical copy of the software resident on the iPhone. The IPSLA places a number of restrictions and limitations on the use of that physical copy:

- As explained, Apple retains ownership and title to the copy of the iPhone Software.
- Section 2(a) of the IPSLA provides that the iPhone Software may be used only on a single Apple-branded iPhone and may not exist on more than one Apple-branded iPhone at a time or on any other phone. The licensee is prohibited from distributing or making the iPhone Software available over a network where it could be used by multiple devices at the same time.
- Section 2(b) provides that updates to the iPhone Software or iPhone system restore software may not be used to update or restore iPhones that the licensee does not control or own, and the licensee may not distribute or make the iPhone Software updates available over a network where they could be used by multiple devices or multiple computers at the same time.
- Section 2(c) provides that, except as and only to the extent permitted by applicable law, the licensee may not copy, decompile, reverse engineer, disassemble, attempt to derive the source code of, decrypt, modify, or create derivative works of the iPhone Software, updates to the iPhone Software, or any part thereof.
- Section 2(c) or 2(d) (depending upon the version of the IPSLA) permits use of the iPhone Software to reproduce materials only so long as such use is limited to reproduction of non-copyrighted materials, materials in which the licensee owns the copyright, or materials the licensee is authorized or legally permitted to reproduce.

- Section 3(a) provides that the licensee may not rent, lease, lend, or sublicense the iPhone Software. Versions 2.0 and 3.0 of the IPSLA also expressly prohibit the sale or redistribution of the iPhone Software.
- Section 3 further imposes restrictions on transfer of the iPhone Software (see the response to question #4 below).
- The Termination section of the IPSLA (Section 5 of ver. 1.0 and Section 6 of vers. 1.1.1, 2.0, and 3.0) provides that the licensee's rights under the IPSLA will terminate automatically without notice from Apple if the licensee fails to comply with any term(s) of the IPSLA. Upon termination of the license, the licensee must cease all use of the iPhone Software and updates.

4. *May the purchaser of an iPhone transfer ownership or dispose of the iPhone and all of the software originally included with the iPhone?*

Response:

Under specific conditions, an iPhone purchaser may transfer his or her ownership of the actual iPhone device, together with his or her license to the copy of the software in the iPhone (as explained above, iPhone purchasers are licensees, and not owners, of the copies of software in the iPhone). Section 3 of all versions of the IPSLA provides as follows: "You may, however, make a one-time permanent transfer of all of your license rights to the iPhone Software to another party in connection with the transfer of ownership of your iPhone, provided that: (a) the transfer must include your iPhone and all of the iPhone Software, including all its component parts, original media, printed materials and this License; (b) you do not retain any copies of the iPhone Software, full or partial, including copies stored on a computer or other storage device; and (c) the party receiving the iPhone Software reads and agrees to accept the terms and conditions of this License."

5. *In testimony, the Electronic Frontier Foundation stated that the iPhone warranty would not apply to an unauthorized modification on an iPhone. Would other services or functionality be affected by "jailbreaking" an iPhone, e.g., would AT&T phone, data, or GPS functionality be affected? Would AT&T be required to provide service to an iPhone modified by the user?*

Response:

Yes, other services and functionality of the iPhone can be affected by jailbreaking of the phone, as well as services and functions on AT&T's phone and data network. The OS controls a critical portion of the iPhone known as the "baseband processor" ("BBP") that is used to connect the phone to a telephone/data network and to utilize services on the network. Once an iPhone is jailbroken, it is much easier to hack the BBP software by making modifications to it. Such modifications can interfere with or otherwise affect phone, data, and GPS functionality in a

number of ways. For example, modifications to the BBP software may introduce functional errors into that software or cause it not to function correctly with other software on the iPhone, which in turn can render the iPhone incapable of connecting to the network at all in order to make phone calls or send/receive data. Such modifications may also interfere with GPS functionality. There is a special GPS chip in the iPhone that in ordinary operation computes location of the phone using the GPS geosynchronous satellites around the globe. However, an enhanced functionality called “assisted GPS” enables the location of the iPhone to be pinpointed with greater accuracy than ordinary GPS by utilizing data about the location of the cell tower to which the user is currently connected. If modifications to the BBP software were to render the user unable to connect to the local AT&T cell phone tower, the assisted GPS functionality would, in turn, not function.

More generally, as Mr. Joswiak testified at the hearings in Palo Alto, a critical consideration in the development of the iPhone was to design it in such a way that a relationship of trust could be established with the telecommunication provider (AT&T in the case of users in the U.S.). Before partnering with Apple to provide voice and data services, it was critical to AT&T that the iPhone be secure against hacks that could allow malicious users, or even well-intentioned users, to wreak havoc on the network. Because jailbreaking makes hacking of the BBP software much easier, jailbreaking affords an avenue for hackers to accomplish a number of undesirable things on the network.

For example, each iPhone contains a unique Exclusive Chip Identification (ECID) number that identifies the phone to the cell tower. With access to the BBP via jailbreaking, hackers may be able to change the ECID, which in turn can enable phone calls to be made anonymously (this would be desirable to drug dealers, for example) or charges for the calls to be avoided. If changing the ECID results in multiple phones having the same ECID being connected to a given tower simultaneously, the tower software might react in an unknown manner, including possibly kicking those phones off the network, making their users unable to make phone calls or send/receive data. By hacking the BBP software through a jailbroken phone and taking control of the BBP software, a hacker can initiate commands to the cell tower software that may skirt the carrier’s rules limiting the packet size or the amount of data that can be transmitted, or avoid charges for sending data. More pernicious forms of activity may also be enabled. For example, a local or international hacker could potentially initiate commands (such as a denial of service attack) that could crash the tower software, rendering the tower entirely inoperable to process calls or transmit data. In short, taking control of the BBP software would be much the equivalent of getting inside the firewall of a corporate computer – to potentially catastrophic result. The technological protection measures were designed into the iPhone precisely to prevent these kinds of pernicious activities, and if granted, the jailbreaking exemption would open the door to them.

Finally, like Apple, AT&T’s support organization is burdened by users of jailbroken phones who encounter functional problems with the phone that result from jailbreaking. Such users often call AT&T to report such problems, believing that they may be the result of problems on AT&T’s network. AT&T is then forced to spend significant resources investigating and diagnosing the problems to determine whether, in fact, there is a problem with AT&T’s network or service.

One additional note is warranted with respect to EFF's claim "that the iPhone warranty would not apply to an unauthorized modification on an iPhone." To clarify, Apple does not deny all warranty service to an iPhone just because it has been jailbroken. For example, if a particular user's iPhone were to have a hardware defect in materials or workmanship within the warranty period that was not caused by jailbreaking, Apple would provide warranty service to that phone, notwithstanding the fact that it had been jailbroken. However, Apple has through a variety of channels and mechanisms notified iPhone users that making unauthorized modifications to the iPhone software violates the iPhone software license agreement and may cause irreparable damage to the device, and that the inability to use an iPhone due to unauthorized software modifications is not covered under the iPhone warranty. Apple also provides iPhone customers 90 days of complimentary technical support, but technical support for issues caused by third party products, including installation of unauthorized software, is excluded.

The difficulty, both with respect to warranty service and technical support, as Mr. Joswiak stated during the hearing, is in making the determinations as to what caused a particular problem with a particular iPhone, a process that is expensive and consumes a lot of resources in Apple's service and support departments. In fact, whether a jailbreak occurred at all can require a lot of effort to ascertain – and the consumers themselves may neither realize it nor report it accurately. The iPhone itself has no reporting mechanism that would quickly identify to either Apple or the consumer that its OS has been modified. And when a customer makes a call to Apple's support line, as opposed to walking into an Apple store, the customer's iPhone is obviously not in the hands of Apple support personnel where it could be examined to determine whether the OS has been modified. Even if the reported problem is caused by jailbreaking, the consumer will often not know or even suspect that as the origin of the problem, because sources of jailbreaking tools such as Pwnage Tool typically do not warn consumers of problems that may ensue from jailbreaking. Although Apple can inquire of the consumer whether he or she has jailbroken the phone, Apple must nevertheless incur the cost of the call and the time it takes to attempt to ascertain whether the source of the problem is, in fact, from jailbreaking.

Apple's goal is to provide first class customer support to all of its customers. While Apple obviously can't provide service or technical support with respect to problems that it did not cause and has no control over, it nevertheless harms Apple's ability to offer a first class customer support experience when Apple is forced to deny support to a customer because of the effects of jailbreaking.. As Mr. Joswiak testified, jailbreaking causes an iPhone to become unstable in unpredictable ways – indeed, in ways that even those who knowingly jailbreak their phone often do not expect or understand. Even the limited number of jailbroken phones that exist today (less than one percent) already give rise to the number one reported bug causing iPhone crashes. If the Copyright Office were to grant the proposed exemption and jailbreaking were to proliferate, Apple's costs would increase exponentially to make the determinations in each instance as to whether reported problems were in fact caused by jailbreaking. But perhaps more importantly, the number of customers Apple would end up having to deny support to would increase as well, thereby harming Apple's ability to give its customers a first class support experience.

In short, the costs and harm to Apple from jailbreaking are very substantial, and Apple's general policy on warranty and support cannot simply be cited as a way to dismiss or avoid them, as the EFF attempted to do at the hearing.

Conclusion

As the preceding discussion makes clear, and as elaborated in the Apple Response and at the hearing on this matter, the technological protection measures of Apple's iPhone are and have always been in place to protect exactly what the DMCA anti-circumvention provisions were promulgated to protect: the pure copyright concerns at the heart of Apple's creation of its iPhone OS and resulting iPhone ecosystem. In its Final Rule on the 2006 Rulemaking Proceeding, the Copyright Office made clear, in addressing the cellular telephone "unlocking" exemption, the significance of "protect[ing] the interests of the copyright owner or the value or integrity of the copyrighted work," as distinguished from a third party's business decision.²³

Here, the risks and dangers to copyrighted work, and to the copyright owner itself, are undeniably present. It is the creator and owner of the copyrighted work – Apple – that is seeking to maintain protection of its authorship and the integrity and value of the work it has created. And the risks and damages to these copyright interests are significant. As the Copyright Office's follow-on questions (regarding, for example, jailbreaking's effects on other services and functionality) make clear, and as Apple's answers above elaborate, all of the risks and damages Apple identified at the hearing threaten Apple's copyright interests at issue. These harms include all of the following:

- Crashes & instability
- Malfunctioning & safety
- Invasion of privacy
- Exposing children to age-inappropriate content
- Viruses & malware
- Inability to update software
- Cellular network impact
- Piracy of developers' applications
- Instability of developers' applications
- Increased support burden
- Developer relationships
- The Apple/iPhone brand
- Limitation on ability to innovate

The list is lengthy and the risks are real. It is critical to note, moreover, that these are all *copyright* risks because they strike at the heart of the integrity and value of Apple's own copyrighted works (in addition to the value and integrity of thousands of other copyrighted works, those created by developers who are relying on Apple to ensure the security of their

²³ Final Rule, 71 Fed. Reg. 68,472 (November 27, 2006) at 68,476.

works). There is no principled way to characterize certain of these harms as “copyright interests” as opposed to “non-copyright interests.” The copyright laws exist to promote the advancement of knowledge by encouraging the creation of new works of expression. In order to promote investment by individuals or companies in new knowledge, authors of new works are allowed to exploit those works, that is, to sell, lease, or otherwise monetize the value of the works in order to earn a return on their investment. Owners of copyrighted works are thus rightly given latitude to make their best judgments about how to earn returns on the value consumers place on their copyrighted works, which in turn maximizes societal welfare by promoting the creation of new works that are valued by society. That has happened in abundance here. The iPhone ecosystem, with the iPhone OS as its centerpiece protected against harmful modifications, has been a tremendous engine for creativity, spawning the creation of over 50,000 new iPhone software applications as of the recent first year anniversary of the App Store. Those applications have been downloaded by users more than one billion times.

All of the harms articulated in the list above damage Apple’s ability to appropriate the value of its copyrighted works and, ultimately, damage consumers because they undercut the overall *iPhone experience*. In this particular situation, it would be arbitrary to credit some as copyright interests but dismiss others as merely protecting a “business decision”²⁴ when all are related to promoting and protecting demand for the iPhone, the monetization vehicle for the copyrighted software. After all, the entire purpose of the intellectual property laws is to promote innovative and creative efforts by protecting business models that exploit the fruits of those creative efforts. Apple’s iPhone business model may not be to the EFF’s liking, but in the manner that it delivered a true mobile computing platform to consumers and created an entirely new category of mobile applications, it is an historic success story for the copyright laws.

To sum up, jailbreaking is hacking that violates Apple’s IP SLA and results in copyright infringement. iPhone purchasers explicitly agree to a limited license to the OS, and do not ever have the right to modify their particular copy of the OS, whether under the IP SLA, Section 117, or the fair use doctrine. The unauthorized modifications sought to be blessed by this exemption create significant damage to the undeniable copyright interests Apple has in the copyrighted

²⁴ In granting the 2006 unlocking exemption, the Copyright Office observed a very different situation from that presented here with respect to the proposed jailbreaking exemption: “The reason that [the four factors enumerated in § 1201(a)(1)(C)(i)–(iv)] appear[] to be neutral is that in this case, the access controls do not appear to actually be deployed in order to protect the interests of the copyright owner or the value or integrity of the copyrighted work; rather, they are used by wireless carriers to limit the ability of subscribers to switch to other carriers, a business decision that has nothing whatsoever to do with the interests protected by copyright. And that, in turn, invokes the additional factor set forth in § 1201(a)(1)(C)(v): ‘such other factors as the Librarian considers appropriate.’ When application of the prohibition on circumvention of access controls would offer no apparent benefit to the author or copyright owner in relation to the work to which access is controlled, but simply offers a benefit to a third party who may use § 1201 to control the use of hardware which, as is increasingly the case, may be operated in part through the use of computer software or firmware, an exemption may well be warranted. Such appears to be the case with respect to the software locks involved in the current proposal.” Final Rule, 71 Fed. Reg. 68,472 (November 27, 2006) at 68,476.

works it created, damage that fundamentally undermines the value and integrity of those works and, at bottom, significantly harms the value consumers obtain from the iPhone.

For these reasons, and for the reasons articulated in greater detail in the Apple Response and at the hearing on this matter, Apple respectfully requests that the proposed jailbreaking exemption be denied.

Attachment A-1

IPSLA ver. 1.0

IMPORTANT: BY USING YOUR iPhone, YOU ARE AGREEING TO BE BOUND BY THE FOLLOWING APPLE AND THIRD PARTY TERMS:-

- A. APPLE iPhone SOFTWARE LICENSE AGREEMENT**
- B. APPLE iTunes STORE TERMS OF SERVICE**
- C. GOOGLE MAPS TERMS AND CONDITIONS**
- D. YOUTUBE TERMS AND CONDITIONS**

**APPLE INC.
iPhone SOFTWARE LICENSE AGREEMENT
Single Use License**

PLEASE READ THIS SOFTWARE LICENSE AGREEMENT ("LICENSE") CAREFULLY BEFORE USING YOUR iPhone. BY USING YOUR iPhone, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS LICENSE. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENSE, DO NOT USE THE iPhone. IF YOU DO NOT AGREE TO THE TERMS OF THE LICENSE, YOU MAY RETURN THE iPhone TO THE PLACE WHERE YOU OBTAINED IT FOR A REFUND.

1. General The software (including Boot ROM code and other embedded software), documentation and any fonts that came with your iPhone, whether in read only memory, on any other media or in any other form (collectively the "iPhone Software") are licensed, not sold, to you by Apple Inc. ("Apple") for use only under the terms of this License, and Apple reserves all rights not expressly granted to you. The rights granted herein are limited to Apple's intellectual property rights in the iPhone Software and do not include any other patents or intellectual property rights. You own the media on which the iPhone Software is recorded but Apple and/or Apple's licensor(s) retain ownership of the iPhone Software itself.

2. Permitted License Uses and Restrictions

(a) This License allows you to use the iPhone Software on a single Apple-labeled iPhone. This License does not allow the iPhone Software to exist on more than one Apple-labeled iPhone at a time, and you may not make the iPhone Software available over a network where it could be used by multiple devices at the same time. This License does not grant you any rights to use Apple proprietary interfaces and other intellectual property in the design, development, manufacture, licensing or distribution of third party devices and accessories for use with the iPhone. Some of those rights are available under a separate license from Apple. For more information, please email madedoripod@apple.com.

(b) With respect to updates to the iPhone Software that Apple may make available for download ("iPhone Software Updates"), this License allows you to download the iPhone Software Updates to update the software on any iPhone that you own or control. This License does not allow you to update iPhones that you do not control or own, and you may not make the iPhone Software Updates available over a network where it could be used by multiple devices or multiple computers at the same time. You may make one copy of the iPhone Software Updates stored on your computer in machine-readable

form for backup purposes only; provided that the backup copy must include all copyright or other proprietary notices contained on the original.

(c) Except as and only to the extent permitted by applicable law, or by licensing terms governing use of open-sourced components included with the iPhone Software, you may not copy, decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the iPhone Software, iPhone Software Updates, or any part thereof. Any attempt to do so is a violation of the rights of Apple and its licensors of the iPhone Software and iPhone Software Updates. If you breach this restriction, you may be subject to prosecution and damages. By storing content on your iPhone you are making a digital copy. In some jurisdictions, it is unlawful to make digital copies without prior permission from the rightholder. The iPhone Software and iPhone Software Updates may be used to reproduce materials so long as such use is limited to reproduction of non-copyrighted materials, materials in which you own the copyright, or materials you are authorized or legally permitted to reproduce. THE IPHONE SOFTWARE AND IPHONE SOFTWARE UPDATES ARE NOT INTENDED FOR USE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL SYSTEMS, LIFE SUPPORT MACHINES OR OTHER EQUIPMENT IN WHICH THE FAILURE OF THE IPHONE SOFTWARE OR IPHONE SOFTWARE UPDATES COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

3. Transfer

(a) You may not rent, lease, lend or sublicense the iPhone Software. You may, however, make a one-time permanent transfer of all of your license rights to the iPhone Software to another party in connection with the transfer of ownership of your iPhone, provided that: (a) the transfer must include your iPhone and all of the iPhone Software, including all its component parts, original media, printed materials and this License; (b) you do not retain any copies of the iPhone Software, full or partial, including copies stored on a computer or other storage device; and (c) the party receiving the iPhone Software reads and agrees to accept the terms and conditions of this License.

(b) With respect to an iPhone Software Update, you may not rent, lease, lend or sublicense the iPhone Software Update. You may, however, make a one-time permanent transfer of all of your license rights to the iPhone Software Update to another party in connection with the transfer of the computer or iPhone on which it is installed, provided that: (a) the transfer must include your computer or iPhone, as applicable, and all of the iPhone Software Update, including all its component parts, original media, printed materials and this License; (b) you do not retain any copies of the iPhone Software Update, full or partial, including copies stored on a computer or other storage device; and (c) the party receiving the iPhone Software Update reads and agrees to accept the terms and conditions of this License.

4. Consent to Use of Non-Personal Data You agree that Apple and its subsidiaries may collect and use technical and related information, including but not limited to technical information about your iPhone, computer, system and application software, and peripherals, that is gathered periodically to facilitate the provision of software

updates, product support and other services to you (if any) related to the iPhone Software, and to verify compliance with the terms of this License. Apple may use this information, as long as it is in a form that does not personally identify you, to improve our products or to provide services or technologies to you.

5. Termination This License is effective until terminated. Your rights under this License will terminate automatically without notice from Apple if you fail to comply with any term(s) of this License. Upon the termination of this License, you shall cease all use of the iPhone Software and iPhone Software Updates.

6. Disclaimer of Warranties YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE IPHONE SOFTWARE AND IPHONE SOFTWARE UPDATES IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. INSTALLATION OF THIS SOFTWARE MAY AFFECT THE USABILITY OF THIRD PARTY SOFTWARE. EXCEPT TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE IPHONE SOFTWARE AND IPHONE SOFTWARE UPDATES, AND ANY SERVICES PERFORMED BY THE IPHONE SOFTWARE AND IPHONE SOFTWARE UPDATES, ARE PROVIDED "AS IS", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND APPLE AND APPLE'S LICENSORS (COLLECTIVELY REFERRED TO AS "APPLE" FOR THE PURPOSES OF SECTIONS 6 AND 7) HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE IPHONE SOFTWARE AND IPHONE SOFTWARE UPDATES, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, OF QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. APPLE DOES NOT WARRANT AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE IPHONE SOFTWARE AND IPHONE SOFTWARE UPDATES, THAT THE FUNCTIONS CONTAINED IN OR SERVICES PERFORMED BY THE IPHONE SOFTWARE AND IPHONE SOFTWARE UPDATES WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE IPHONE SOFTWARE AND IPHONE SOFTWARE UPDATES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE IPHONE SOFTWARE AND IPHONE SOFTWARE UPDATES WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY APPLE OR AN APPLE AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY. SHOULD THE IPHONE SOFTWARE OR IPHONE SOFTWARE UPDATES PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO THE ABOVE EXCLUSION AND LIMITATIONS MAY NOT APPLY TO YOU.

The iPhone Software and iPhone Software Updates may enable access to Apple's iTunes Store and other Apple and third party web services (collectively and individually, "Services"), and to Apple and third party sites and information located worldwide throughout the Internet. Use of the Services requires Internet access and use of certain

Services will require you to accept additional terms of service.

Because Apple has no control over third party sites and information, Apple makes no guarantees as to such sites and information, including but not limited to: (a) the accuracy, availability, sequence, completeness, currency, content, validity or quality of any such sites and information, or (b) whether a search completed through the iPhone may locate unintended or objectionable content. Because some of the content on the Internet consists of material that is adult-oriented or otherwise objectionable to some people or viewers under the age of 18, the results of any search or entering of a particular URL using the iPhone may automatically and unintentionally generate links or references to objectionable material.

Certain Services may include materials from third parties. You acknowledge and agree that Apple is not responsible for examining or evaluating the content or the accuracy, completeness, currency, validity or quality of any such third party material. Apple does not warrant or endorse and does not assume and will not have any liability or responsibility for any third party materials, or for any other materials, products, or services of third parties. You agree that you will not use any third party materials in a manner that would infringe or violate the rights of any other party, and that Apple is not in any way responsible for any such use by you.

By using the iPhone Software and iPhone Software Updates, you acknowledge that Apple makes no representations or warranties with regard to any sites or information displayed by or accessed through the iPhone Software and iPhone Software Updates, or any Services performed by the iPhone Software and iPhone Software Updates in relation to such sites or information. Apple, its officers, affiliates and subsidiaries shall not, directly or indirectly, be liable, in any way, to you or any other person for the content you receive or view using the Apple Software or for any inaccuracies, errors in or omissions from the content. Apple and its licensors reserve the right to change, suspend, remove, or disable access to any Services at any time without notice. In no event will Apple be liable for the removal of or disabling of access to any such Services. Apple may also impose limits on the use of or access to certain Services, in any case and without notice or liability.

7. Limitation of Liability TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT SHALL APPLE BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO YOUR USE OR INABILITY TO USE THE IPHONE SOFTWARE AND IPHONE SOFTWARE UPDATES, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE) AND EVEN IF APPLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR PERSONAL INJURY, OR OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION MAY NOT APPLY TO YOU. In no event shall Apple's total liability to you for all damages (other than as may be required by applicable

law in cases involving personal injury) exceed the amount of fifty dollars (\$50.00). The foregoing limitations will apply even if the above stated remedy fails of its essential purpose.

8. Export Control You may not use or otherwise export or reexport the iPhone Software or iPhone Software Updates except as authorized by United States law and the laws of the jurisdiction(s) in which the iPhone Software and iPhone Software Updates were obtained. In particular, but without limitation, neither the iPhone Software nor the iPhone Software Updates may be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the iPhone Software and iPhone Software Updates, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use the iPhone Software or the iPhone Software Updates for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons.

9. Government End Users The iPhone Software, iPhone Software Updates, and related documentation are "Commercial Items", as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States.

10. Controlling Law and Severability This License will be governed by and construed in accordance with the laws of the State of California, as applied to agreements entered into and to be performed entirely within California between California residents. This License shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. If for any reason a court of competent jurisdiction finds any provision, or portion thereof, to be unenforceable, the remainder of this License shall continue in full force and effect.

11. Complete Agreement; Governing Language This License constitutes the entire agreement between the parties with respect to the use of the iPhone Software and iPhone Software Updates licensed hereunder and supersedes all prior or contemporaneous understandings regarding such subject matter. No amendment to or modification of this License will be binding unless in writing and signed by Apple. Any translation of this License is done for local requirements and in the event of a dispute between the English and any non-English versions, the English version of this License shall govern.

12. Third Party Acknowledgements Portions of the iPhone Software utilize or include third party software and other copyrighted material. Acknowledgements, licensing terms and disclaimers for such material are contained in the electronic documentation for the iPhone Software, and your use of such material is governed by their respective terms.

13. Use of MPEG-4 The iPhone Software and iPhone Software Updates are licensed under the MPEG-4 Systems Patent Portfolio License for encoding in compliance with the MPEG-4 Systems Standard, except that an additional license and payment of royalties are necessary for encoding in connection with (i) data stored or replicated in physical media which is paid for on a title by title basis and/or (ii) data which is paid for on a title by title basis and is transmitted to an end user for permanent storage and/or use. Such additional license may be obtained from MPEG LA, LLC. See <http://www.mpegla.com> for additional details.

The iPhone Software and iPhone Software Updates contain MPEG-4 video encoding and/or decoding functionality, the iPhone Software and iPhone Software Updates are licensed under the MPEG-4 Visual Patent Portfolio License for the personal and non-commercial use of a consumer for (i) encoding video in compliance with the MPEG-4 Visual Standard ("MPEG-4 Video") and/or (ii) decoding MPEG-4 video that was encoded by a consumer engaged in a personal and non-commercial activity and/or was obtained from a video provider licensed by MPEG LA to provide MPEG-4 video. No license is granted or shall be implied for any other use.

Additional information including that relating to promotional, internal and commercial uses and licensing may be obtained from MPEG LA, LLC. See <http://www.mpegla.com>. For answers to frequently asked questions regarding use fees under the MPEG LA Visual Patent Portfolio License see www.apple.com/mpeg4 or www.apple.com/quicktime/products/qt/faq.html.

14. H.264/AVC Notice The iPhone Software and iPhone Software Updates contain AVC encoding and/or decoding functionality, commercial use of H.264/AVC requires additional licensing and the following provision applies: THE AVC FUNCTIONALITY IN THE IPHONE SOFTWARE AND IPHONE SOFTWARE UPDATES ARE LICENSED HEREIN ONLY FOR THE PERSONAL AND NON-COMMERCIAL USE OF A CONSUMER TO (i) ENCODE VIDEO IN COMPLIANCE WITH THE AVC STANDARD ("AVC VIDEO") AND/OR (ii) DECODE AVC VIDEO THAT WAS ENCODED BY A CONSUMER ENGAGED IN A PERSONAL AND NON-COMMERCIAL ACTIVITY AND/OR AVC VIDEO THAT WAS OBTAINED FROM A VIDEO PROVIDER LICENSED TO PROVIDE AVC VIDEO. INFORMATION REGARDING OTHER USES AND LICENSES MAY BE OBTAINED FROM MPEG LA L.L.C. SEE [HTTP://WWW.MPEGLA.COM](http://www.mpegla.com).

EA0386
5/23/07

Apple Inc.

Attachment A-2

IPSLA ver. 1.1.1

U.S. - ENGLISH

IMPORTANT: BY USING YOUR IPHONE, YOU ARE AGREEING TO BE BOUND BY THE FOLLOWING APPLE AND THIRD PARTY TERMS:-

- A. APPLE IPHONE SOFTWARE LICENSE AGREEMENT**
- B. GOOGLE MAPS TERMS AND CONDITIONS**
- C. YOUTUBE TERMS AND CONDITIONS**

APPLE INC. IPHONE SOFTWARE LICENSE AGREEMENT Single Use License

PLEASE READ THIS SOFTWARE LICENSE AGREEMENT ("LICENSE") CAREFULLY BEFORE USING YOUR IPHONE OR DOWNLOADING THE SOFTWARE UPDATE ACCOMPANYING THIS LICENSE. BY USING YOUR IPHONE OR DOWNLOADING THIS SOFTWARE UPDATE, AS APPLICABLE, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS LICENSE. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENSE, DO NOT USE THE IPHONE OR DOWNLOAD THIS SOFTWARE UPDATE. IF YOU DO NOT AGREE TO THE TERMS OF THE LICENSE AND HAVE NOT USED THE IPHONE, YOU MAY RETURN THE IPHONE TO THE PLACE WHERE YOU OBTAINED IT FOR A REFUND.

1. General. The software (including Boot ROM code and other embedded software), documentation and any fonts that came with your iPhone, as may be updated or replaced by software updates or system restore software provided by Apple, whether in read only memory, on any other media or in any other form (collectively the "iPhone Software") are licensed, not sold, to you by Apple Inc. ("Apple") for use only under the terms of this License, and Apple reserves all rights not expressly granted to you. You own the media on which the iPhone Software is recorded but Apple and/or Apple's licensor(s) retain ownership of the iPhone Software itself.

2. Permitted License Uses and Restrictions

(a) This License allows you to use the iPhone Software on a single Apple-labeled iPhone. This License does not allow the iPhone Software to exist on more than one Apple-labeled iPhone at a time or on any other phone, and you may not distribute or make the iPhone Software available over a network where it could be used by multiple devices at the same time. This License does not grant you any rights to use Apple proprietary interfaces and other intellectual property in the design, development, manufacture, licensing or distribution of third party devices and accessories for use with the iPhone. Some of those rights are available under a separate license from Apple. For more information, please email madedoripod@apple.com.

(b) With respect to the feature enhancements and updates to the iPhone Software and system restore software that Apple may make available for download ("iPhone Software Updates"), this License allows you to download the iPhone Software Updates to update or restore the software on any iPhone that you own or control. This License does not

allow you to update or restore iPhones that you do not control or own, and you may not distribute or make the iPhone Software Updates available over a network where it could be used by multiple devices or multiple computers at the same time. You may make one copy of the iPhone Software Updates stored on your computer in machine-readable form for backup purposes only, provided that the backup copy must include all copyright or other proprietary notices contained on the original.

(c) Except as and only to the extent permitted by applicable law, or by licensing terms governing use of open-sourced components included with the iPhone Software or iPhone Software Updates, you may not copy, decompile, reverse engineer, disassemble, attempt to derive the source code of, decrypt, modify, or create derivative works of the iPhone Software, iPhone Software Updates, or any part thereof. Any attempt to do so is a violation of the rights of Apple and its licensors of the iPhone Software and iPhone Software Updates. If you breach this restriction, you may be subject to prosecution and damages.

(d) By storing content on your iPhone you are making a digital copy. In some jurisdictions, it is unlawful to make digital copies without prior permission from the rightsholder. The iPhone Software may be used to reproduce materials so long as such use is limited to reproduction of non-copyrighted materials, materials in which you own the copyright, or materials you are authorized or legally permitted to reproduce.

(e) THE IPHONE SOFTWARE AND IPHONE SOFTWARE UPDATES ARE NOT INTENDED FOR USE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL SYSTEMS, LIFE SUPPORT MACHINES OR OTHER EQUIPMENT IN WHICH THE FAILURE OF THE IPHONE SOFTWARE OR IPHONE SOFTWARE UPDATES COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

3. Transfer

(a) You may not rent, lease, lend or sublicense the iPhone Software. You may, however, make a one-time permanent transfer of all of your license rights to the iPhone Software to another party in connection with the transfer of ownership of your iPhone, provided that: (a) the transfer must include your iPhone and all of the iPhone Software, including all its component parts, original media, printed materials and this License; (b) you do not retain any copies of the iPhone Software, full or partial, including copies stored on a computer or other storage device; and (c) the party receiving the iPhone Software reads and agrees to accept the terms and conditions of this License.

(b) You may not rent, lease, lend or sublicense the iPhone Software Update. You may, however, make a one-time permanent transfer of all of your license rights to the iPhone Software Update to another party in connection with the transfer of the computer on which it is installed, provided that: (a) the transfer must include your computer, and all of the iPhone Software Update, including all its component parts, original media, printed materials and this License; (b) you do not retain any copies of the iPhone Software Update, full or partial, including copies stored on a computer or other storage device;

and (c) the party receiving the iPhone Software Update reads and agrees to accept the terms and conditions of this License.

4. Consent to Use of Non-Personal Data. You agree that Apple and its subsidiaries may collect and use technical and related information, including but not limited to technical information about your iPhone, computer, system and application software, and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services to you (if any) related to the iPhone Software, and to verify compliance with the terms of this License. Apple may use this information, as long as it is in a form that does not personally identify you, to improve our products or to provide services or technologies to you.

5. iTunes Store and other Services. This software enables access to Apple's iTunes Store and other Apple and third party web services and sites (collectively and individually, "Services"). Use of the Services requires Internet access and use of certain Services requires you to accept additional terms of service.

By using this software in connection with an iTunes Store account, you agree to the latest iTunes Store Terms of Service, which you may access and review at <http://www.apple.com/legal/itunes/ww/>.

You understand that by using any of the Services, you may encounter content that may be deemed offensive, indecent, or objectionable, which content may or may not be identified as having explicit language, and that the results of any search or entering of a particular URL may automatically and unintentionally generate links or references to objectionable material. Nevertheless, you agree to use the Services at your sole risk and that Apple shall have no liability to you for content that may be found to be offensive, indecent, or objectionable. Content types (including genres, sub-genres and Podcast categories and sub-categories and the like) and descriptions are provided for convenience, and you acknowledge and agree that Apple does not guarantee their accuracy.

Certain Services may consist of or include materials from third parties or links to certain third party web sites. You acknowledge and agree that Apple is not responsible for examining or evaluating the content, accuracy, completeness, currency, validity, copyright compliance, legality, decency or quality of any such third-party materials or web sites. Apple does not warrant or endorse and does not assume and will not have any liability or responsibility for any third-party Services, materials or web sites, or for any other materials, products, or services of third parties. Links to other web sites are provided solely as a convenience to you.

In addition, third party Services and content that may be accessed from, displayed on or linked to from the iPhone are not available in all languages. Apple makes no representation that such Services and content are appropriate or available for use in any particular location. To the extent you choose to access such Services or content, you do so at your own initiative and are responsible for compliance with any applicable laws, including but not limited to applicable local laws.

You agree that the Services, including but not limited to graphics, audio clips, and editorial content, contain proprietary information and material that is owned by Apple and/or its licensors, and is protected by applicable intellectual property and other laws, including but not limited to copyright, and that you will not use such proprietary information or materials in any way whatsoever except for permitted use of the Services. No portion of the Services may be reproduced in any form or by any means. You agree not to modify, rent, lease, loan, sell, distribute, or create derivative works based on the Services, in any manner, and you shall not exploit the Services in any unauthorized way whatsoever, including but not limited to, by trespass or burdening network capacity. You agree that you will not use any third-party materials in a manner that would infringe or violate the rights of any other party, and that Apple is not in any way responsible for any such use by you.

By using the Services, you acknowledge that Apple makes no representations or warranties with regard to any sites or information displayed by or accessed through the Services. Apple, its officers, affiliates and subsidiaries shall not, directly or indirectly, be liable, in any way, to you or any other person for the content you receive or view using the Services or for any inaccuracies, errors in or omissions from the content. Financial information displayed by any Services is for general informational purposes only and is not intended to be relied upon as investment advice. Before executing any securities transaction based upon information obtained through the Services, you should consult with a financial professional. Neither Apple nor any of its content providers guarantees the accuracy, completeness, or timeliness of stock information displayed by any Services. Apple and its licensors reserve the right to change, suspend, remove, or disable access to any Services at any time without notice. In no event will Apple be liable for the removal of or disabling of access to any such Services. Apple may also impose limits on the use of or access to certain Services, in any case and without notice or liability.

6. Termination. This License is effective until terminated. Your rights under this License will terminate automatically without notice from Apple if you fail to comply with any term(s) of this License. Upon the termination of this License, you shall cease all use of the iPhone Software and iPhone Software Updates.

7. Disclaimer of Warranties. YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE IPHONE SOFTWARE, IPHONE SOFTWARE UPDATES, AND SERVICES, IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. INSTALLATION OF THIS SOFTWARE MAY AFFECT THE USABILITY OF THIRD PARTY SOFTWARE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE IPHONE SOFTWARE AND IPHONE SOFTWARE UPDATES, AND ANY SERVICES PERFORMED BY THE IPHONE SOFTWARE AND IPHONE SOFTWARE UPDATES, ARE PROVIDED "AS IS", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND APPLE AND APPLE'S LICENSORS (COLLECTIVELY REFERRED TO AS "APPLE" FOR THE PURPOSES OF SECTIONS 7 AND 8) HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE IPHONE SOFTWARE, IPHONE SOFTWARE UPDATES, AND

SERVICES, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. APPLE DOES NOT WARRANT AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE IPHONE SOFTWARE, IPHONE SOFTWARE UPDATES AND SERVICES, THAT THE FUNCTIONS CONTAINED IN OR SERVICES PERFORMED BY THE IPHONE SOFTWARE AND IPHONE SOFTWARE UPDATES WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE IPHONE SOFTWARE, IPHONE SOFTWARE UPDATES, AND SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE IPHONE SOFTWARE, IPHONE SOFTWARE UPDATES, AND SERVICES WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY APPLE OR AN APPLE AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY. SHOULD THE IPHONE SOFTWARE, IPHONE SOFTWARE UPDATES OR SERVICES PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO THE ABOVE EXCLUSION AND LIMITATIONS MAY NOT APPLY TO YOU.

8. Limitation of Liability. TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT SHALL APPLE BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO YOUR USE OF OR INABILITY TO USE THE IPHONE SOFTWARE, IPHONE SOFTWARE UPDATES, AND SERVICES, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE) AND EVEN IF APPLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR PERSONAL INJURY, OR OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION MAY NOT APPLY TO YOU. In no event shall Apple's total liability to you for all damages (other than as may be required by applicable law in cases involving personal injury) exceed the amount of fifty dollars (\$50.00). The foregoing limitations will apply even if the above stated remedy fails of its essential purpose.

9. Export Control. You may not use or otherwise export or reexport the iPhone Software or iPhone Software Updates except as authorized by United States law and the laws of the jurisdiction(s) in which the iPhone Software and iPhone Software Updates were obtained. In particular, but without limitation, neither the iPhone Software nor the iPhone Software Updates may be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the iPhone Software and iPhone Software Updates, you represent and warrant that you are not located in any such country or on any such list.

You also agree that you will not use the iPhone Software or the iPhone Software Updates for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons.

10. Government End Users. The iPhone Software, iPhone Software Updates, and related documentation are "Commercial Items", as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States.

11. Controlling Law and Severability. This License will be governed by and construed in accordance with the laws of the State of California, as applied to agreements entered into and to be performed entirely within California between California residents. This License shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. If for any reason a court of competent jurisdiction finds any provision, or portion thereof, to be unenforceable, the remainder of this License shall continue in full force and effect.

12. Complete Agreement; Governing Language. This License constitutes the entire agreement between the parties with respect to the use of the iPhone Software and iPhone Software Updates licensed hereunder and supersedes all prior or contemporaneous understandings regarding such subject matter. No amendment to or modification of this License will be binding unless in writing and signed by Apple. Any translation of this License is done for local requirements and in the event of a dispute between the English and any non-English versions, the English version of this License shall govern.

13. Third Party Acknowledgements. Portions of the iPhone Software and iPhone Software Updates may utilize or include third party software and other copyrighted material. Acknowledgements, licensing terms and disclaimers for such material are contained in the electronic documentation for the iPhone Software and iPhone Software Updates, and your use of such material is governed by their respective terms.

14. Use of MPEG-4. The iPhone Software and iPhone Software Updates are licensed under the MPEG-4 Systems Patent Portfolio License for encoding in compliance with the MPEG-4 Systems Standard, except that an additional license and payment of royalties are necessary for encoding in connection with (i) data stored or replicated in physical media which is paid for on a title by title basis and/or (ii) data which is paid for on a title by title basis and is transmitted to an end user for permanent storage and/or use. Such additional license may be obtained from MPEG LA, LLC. See

<http://www.mpegla.com> for additional details.

The iPhone Software and iPhone Software Updates contain MPEG-4 video encoding and/or decoding functionality, the iPhone Software and iPhone Software Updates are licensed under the MPEG-4 Visual Patent Portfolio License for the personal and non-commercial use of a consumer for (i) encoding video in compliance with the MPEG-4 Visual Standard ("MPEG-4 Video") and/or (ii) decoding MPEG-4 video that was encoded by a consumer engaged in a personal and non-commercial activity and/or was obtained from a video provider licensed by MPEG LA to provide MPEG-4 video. No license is granted or shall be implied for any other use.

Additional information including that relating to promotional, internal and commercial uses and licensing may be obtained from MPEG LA, LLC. See <http://www.mpegla.com>. For answers to frequently asked questions regarding use fees under the MPEG LA Visual Patent Portfolio License see www.apple.com/mpeg4 or www.apple.com/quicktime/products/qt/faq.html.

15. H.264/AVC Notice. The iPhone Software and iPhone Software Updates contain AVC encoding and/or decoding functionality, commercial use of H.264/AVC requires additional licensing and the following provision applies: THE AVC FUNCTIONALITY IN THE IPHONE SOFTWARE AND IPHONE SOFTWARE UPDATES ARE LICENSED HEREIN ONLY FOR THE PERSONAL AND NON-COMMERCIAL USE OF A CONSUMER TO (i) ENCODE VIDEO IN COMPLIANCE WITH THE AVC STANDARD ("AVC VIDEO") AND/OR (ii) DECODE AVC VIDEO THAT WAS ENCODED BY A CONSUMER ENGAGED IN A PERSONAL AND NON-COMMERCIAL ACTIVITY AND/OR AVC VIDEO THAT WAS OBTAINED FROM A VIDEO PROVIDER LICENSED TO PROVIDE AVC VIDEO. INFORMATION REGARDING OTHER USES AND LICENSES MAY BE OBTAINED FROM MPEG LA L.L.C. SEE [HTTP://WWW.MPEGLA.COM](http://www.mpegla.com).

16. Yahoo Search Service Restrictions. The Yahoo Search Service available through Safari is licensed for use only in the following countries: Argentina, Aruba, Australia, Austria, Barbados, Belgium, Bermuda, Brazil, Bulgaria, Canada, Cayman Islands, Chile, Colombia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, France, Germany, Greece, Grenada, Guatemala, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Italy, Jamaica, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Panama, Peru, Philippines, Poland, Portugal, Puerto Rico, Romania, Singapore, Slovakia, Slovenia, South Korea, Spain, St. Lucia, St. Vincent, Sweden, Switzerland, Taiwan, Thailand, The Bahamas, Trinidad and Tobago, Turkey, UK, Uruguay, US and Venezuela.

EA0426
Update Rev. 9/14/07

Attachment A-3

IPSLA ver. 2.0

U.S. - ENGLISH

IMPORTANT: BY USING YOUR iPhone, YOU ARE AGREEING TO BE BOUND BY THE FOLLOWING APPLE AND THIRD PARTY TERMS:

- A. **APPLE iPhone SOFTWARE LICENSE AGREEMENT**
- B. **NOTICES FROM APPLE**
- C. **GOOGLE MAPS TERMS AND CONDITIONS**
- D. **YOUTUBE TERMS AND CONDITIONS**

APPLE INC. iPhone SOFTWARE LICENSE AGREEMENT Single Use License

PLEASE READ THIS SOFTWARE LICENSE AGREEMENT ("LICENSE") CAREFULLY BEFORE USING YOUR iPhone OR DOWNLOADING THE SOFTWARE UPDATE ACCOMPANYING THIS LICENSE. BY USING YOUR iPhone OR DOWNLOADING THIS SOFTWARE UPDATE, AS APPLICABLE, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS LICENSE, UNLESS YOU RETURN THE iPhone IN ACCORDANCE WITH APPLE'S RETURN POLICY. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENSE, DO NOT USE THE iPhone OR DOWNLOAD THIS SOFTWARE UPDATE. IF YOU DO NOT AGREE TO THE TERMS OF THE LICENSE, YOU MAY RETURN THE iPhone WITHIN THE RETURN PERIOD TO THE APPLE STORE OR AUTHORIZED DISTRIBUTOR WHERE YOU OBTAINED IT FOR A REFUND, SUBJECT TO APPLE'S RETURN POLICY FOUND AT http://www.apple.com/legal/sales_policies/.

1. General. The software (including Boot ROM code and other embedded software), documentation, interfaces, content, fonts and any data that came with your iPhone ("Original iPhone Software"), as may be updated or replaced by feature enhancements, software updates or system restore software provided by Apple ("iPhone Software Updates"), whether in read only memory, on any other media or in any other form (the Original iPhone Software and iPhone Software Updates are collectively referred to as the "iPhone Software") are licensed, not sold, to you by Apple Inc. ("Apple") for use only under the terms of this License, and Apple reserves all rights not expressly granted to you. You own the media on which the iPhone Software is recorded but Apple and/or Apple's licensor(s) retain ownership of the iPhone Software itself.

2. Permitted License Uses and Restrictions.

(a) This License allows you to use the iPhone Software on a single Apple-branded iPhone. This License does not allow the iPhone Software to exist on more than one Apple-branded iPhone at a time or on any other phone, and you may not distribute or make the iPhone Software available over a network where it could be used by multiple devices at the same time. This License does not grant you any rights to use Apple proprietary interfaces and other intellectual property in the design, development, manufacture, licensing or distribution of third party devices and accessories, or third party software applications, for use with the iPhone. Some of those rights are available under separate licenses from Apple. For more information on developing third party devices and accessories for the iPhone, please email madeforipod@apple.com. For more information on developing software applications for the iPhone, please email devprograms@apple.com.

(b) With respect to iPhone Software Updates that Apple may make available for download, this License allows you to download the iPhone Software Updates to update or restore the software on any iPhone that you own or control. This License does not allow you to update or restore iPhones that you do not control or own, and you may not distribute or make the iPhone Software Updates available over a network where they could be used by multiple devices or multiple computers at the same time. You may make one copy of the iPhone Software Updates stored on your computer in machine-readable form for backup purposes only, provided that the backup copy must include all copyright or other proprietary notices contained on the original.

(c) You may not and you agree not to, or to enable others to, copy (except as expressly permitted by this License), decompile, reverse engineer, disassemble, attempt to derive the source code of, decrypt, modify, or create derivative works of the iPhone Software or any services provided by the iPhone Software, or any part thereof (except as and only to the extent any foregoing restriction is prohibited by applicable law or to the extent as may be permitted by licensing terms governing use of open-sourced components included with the iPhone Software). Any attempt to do so is a violation of the rights of Apple and its licensors of the iPhone Software. If you breach this restriction, you may be subject to prosecution and damages.

(d) By storing content on your iPhone you are making a digital copy. In some jurisdictions, it is unlawful to make digital copies without prior permission from the rightsholder. The iPhone Software may be used to reproduce materials so long as such use is limited to reproduction of non-copyrighted materials, materials in which you own the copyright, or materials you are authorized or legally permitted to reproduce.

3. Transfer. You may not rent, lease, lend, sell, redistribute, or sublicense the iPhone Software. You may, however, make a one-time permanent transfer of all of your license rights to the iPhone Software to another party in connection with the transfer of ownership of your iPhone, provided that: (a) the transfer must include your iPhone and all of the iPhone Software, including all its component parts, original media, printed materials and this License; (b) you do not retain any copies of the iPhone Software, full or partial, including copies stored on a computer or other storage device; and (c) the party receiving the iPhone Software reads and agrees to accept the terms and conditions of this License.

4. Consent to Use of Non-Personal Data.

(a) You agree that Apple and its subsidiaries may collect and use technical and related information, including but not limited to information about your iPhone, computer, system and application software, and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services to you (if any) related to the iPhone Software, and to verify compliance with the terms of this License. Apple may use this information, as long as it is in a form that does not personally identify you, to improve our products or to provide services or technologies to you.

(b) Apple may provide certain services through your iPhone that rely upon location information. To provide these services, Apple and its partners may transmit, collect, maintain, process and use your location data, including the real-time geographic location of your iPhone. **By using any location-based services on your iPhone, you agree and consent to Apple's and its partners' transmission, collection, maintenance, processing and use of your location data to provide you with such services.** The location data is collected in a form that does not personally identify you. You may withdraw this consent at any time by not using the location-based features. Not using these features will not impact the functionality of your iPhone.

5. iTunes Store and other Services; Third Party Materials. The iPhone Software enables access to Apple's iTunes Store and other Apple and third party services and web sites (collectively and individually, "Services"). Use of the Services requires Internet access and use of certain Services requires you to accept additional terms of service. By using this software in connection with an iTunes Store account, you agree to the latest iTunes Store Terms of Service, which you may access and review at <http://www.apple.com/legal/itunes/ww/>.

You understand that by using any of the Services, you may encounter content that may be deemed offensive, indecent, or objectionable, which content may or may not be identified as having explicit language, and that the results of any search or entering of a particular URL may automatically and unintentionally generate links or references to objectionable material. Nevertheless, you agree to use the Services at your sole risk and that Apple shall have no liability to you for content that may be found to be offensive, indecent, or objectionable.

Certain Services may display, include or make available content, data, information, applications or materials from third parties ("Third Party Materials") or provide links to certain third party web sites. By using the Services, you acknowledge and agree that Apple is not responsible for examining or evaluating

the content, accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect of such Third Party Materials or web sites. Apple, its officers, affiliates and subsidiaries do not warrant or endorse and do not assume and will not have any liability or responsibility to you or any other person for any third-party Services, Third Party Materials or web sites, or for any other materials, products, or services of third parties. Third Party Materials and links to other web sites are provided solely as a convenience to you. Financial information displayed by any Services is for general informational purposes only and is not intended to be relied upon as investment advice. Before executing any securities transaction based upon information obtained through the Services, you should consult with a financial professional. Location data provided by any Services is for basic navigational purposes only and is not intended to be relied upon in situations where precise location information is needed or where erroneous, inaccurate or incomplete location data may lead to death, personal injury, property or environmental damage. Neither Apple nor any of its content providers guarantees the availability, accuracy, completeness, reliability, or timeliness of stock information or location data displayed by any Services.

You agree that the Services contain proprietary content, information and material that is owned by Apple and/or its licensors, and is protected by applicable intellectual property and other laws, including but not limited to copyright, and that you will not use such proprietary content, information or materials in any way whatsoever except for permitted use of the Services. No portion of the Services may be reproduced in any form or by any means. You agree not to modify, rent, lease, loan, sell, distribute, or create derivative works based on the Services, in any manner, and you shall not exploit the Services in any unauthorized way whatsoever, including but not limited to, by trespass or burdening network capacity. You further agree not to use the Services in any manner to harass, abuse, stalk, threaten, defame or otherwise infringe or violate the rights of any other party, and that Apple is not in any way responsible for any such use by you, nor for any harassing, threatening, defamatory, offensive or illegal messages or transmissions that you may receive as a result of using any of the Services.

In addition, third party Services and Third Party Materials that may be accessed from, displayed on or linked to from the iPhone are not available in all languages or in all countries. Apple makes no representation that such Services and Materials are appropriate or available for use in any particular location. To the extent you choose to access such Services or Materials, you do so at your own initiative and are responsible for compliance with any applicable laws, including but not limited to applicable local laws. Apple and its licensors reserve the right to change, suspend, remove, or disable access to any Services at any time without notice. In no event will Apple be liable for the removal of or disabling of access to any such Services. Apple may also impose limits on the use of or access to certain Services, in any case and without notice or liability.

6. Termination. This License is effective until terminated. Your rights under this License will terminate automatically without notice from Apple if you fail to comply with any term(s) of this License. Upon the termination of this License, you shall cease all use of the iPhone Software.

7. Disclaimer of Warranties. YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE IPHONE SOFTWARE AND SERVICES, IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE IPHONE SOFTWARE AND SERVICES PERFORMED BY THE IPHONE SOFTWARE ARE PROVIDED "AS IS" AND "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND APPLE AND APPLE'S LICENSORS (COLLECTIVELY REFERRED TO AS "APPLE" FOR THE PURPOSES OF SECTIONS 7 AND 8) HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE IPHONE SOFTWARE AND SERVICES, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. APPLE DOES NOT WARRANT AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE IPHONE SOFTWARE AND SERVICES, THAT THE FUNCTIONS CONTAINED IN OR SERVICES PERFORMED BY THE IPHONE SOFTWARE WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE IPHONE

SOFTWARE AND SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS IN THE IPHONE SOFTWARE OR SERVICES WILL BE CORRECTED, OR THAT THE IPHONE SOFTWARE WILL BE COMPATIBLE OR WORK WITH ANY THIRD PARTY SOFTWARE, APPLICATIONS OR THIRD PARTY SERVICES. INSTALLATION OF THIS SOFTWARE MAY AFFECT THE USABILITY OF THIRD PARTY SOFTWARE. YOU FURTHER ACKNOWLEDGE THAT THE IPHONE SOFTWARE AND SERVICES ARE NOT INTENDED OR SUITABLE FOR USE IN SITUATIONS OR ENVIRONMENTS WHERE THE FAILURE OF, OR ERRORS OR INACCURACIES IN THE CONTENT, DATA OR INFORMATION PROVIDED BY, THE IPHONE SOFTWARE OR SERVICES COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE, INCLUDING WITHOUT LIMITATION THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, LIFE SUPPORT OR WEAPONS SYSTEMS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY APPLE OR AN APPLE AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY. SHOULD THE IPHONE SOFTWARE OR SERVICES PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO THE ABOVE EXCLUSION AND LIMITATIONS MAY NOT APPLY TO YOU.

8. Limitation of Liability. TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT SHALL APPLE BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, CORRUPTION OR LOSS OF DATA, FAILURE TO TRANSMIT OR RECEIVE ANY DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO YOUR USE OF OR INABILITY TO USE THE IPHONE SOFTWARE AND SERVICES OR ANY THIRD PARTY SOFTWARE OR APPLICATIONS IN CONJUNCTION WITH THE IPHONE SOFTWARE, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE) AND EVEN IF APPLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR PERSONAL INJURY, OR OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION MAY NOT APPLY TO YOU. In no event shall Apple's total liability to you for all damages (other than as may be required by applicable law in cases involving personal injury) exceed the amount of fifty dollars (\$50.00). The foregoing limitations will apply even if the above stated remedy fails of its essential purpose.

9. Digital Certificates. The iPhone Software contains functionality that allows it to accept digital certificates either issued from Apple or from third parties. YOU ARE SOLELY RESPONSIBLE FOR DECIDING WHETHER OR NOT TO RELY ON A CERTIFICATE WHETHER ISSUED BY APPLE OR A THIRD PARTY. YOUR USE OF DIGITAL CERTIFICATES IS AT YOUR SOLE RISK. APPLE MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ACCURACY, SECURITY, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS WITH RESPECT TO DIGITAL CERTIFICATES. You agree that (a) you will not falsify or misuse any certificate; (b) you will use Digital Certificates for legal purposes only and in accordance with any applicable Certificate Policy, Certificate Practice Statement or other Certificate Authority business practice disclosures; (c) you are solely responsible for preventing any unauthorized user from making use of your Digital Certificates; and (d) you will revoke any certificate that you have reason to believe has been compromised.

10. Export Control. You may not use or otherwise export or reexport the iPhone Software except as authorized by United States law and the laws of the jurisdiction(s) in which the iPhone Software was obtained. In particular, but without limitation, the iPhone Software may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the iPhone Software, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use the iPhone Software for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons.

11. Government End Users. The iPhone Software and related documentation are "Commercial Items", as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States.

12. Controlling Law and Severability. This License will be governed by and construed in accordance with the laws of the State of California, as applied to agreements entered into and to be performed entirely within California between California residents. This License shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. If for any reason a court of competent jurisdiction finds any provision, or portion thereof, to be unenforceable, the remainder of this License shall continue in full force and effect.

13. Complete Agreement; Governing Language. This License constitutes the entire agreement between the parties with respect to the use of the iPhone Software licensed hereunder and supersedes all prior or contemporaneous understandings regarding such subject matter. No amendment to or modification of this License will be binding unless in writing and signed by Apple. Any translation of this License is done for local requirements and in the event of a dispute between the English and any non-English versions, the English version of this License shall govern.

14. Third Party Acknowledgements. Portions of the iPhone Software may utilize or include third party software and other copyrighted material. Acknowledgements, licensing terms and disclaimers for such material are contained in the electronic documentation for the iPhone Software, and your use of such material is governed by their respective terms.

15. Use of MPEG-4. The iPhone Software is licensed under the MPEG-4 Systems Patent Portfolio License for encoding in compliance with the MPEG-4 Systems Standard, except that an additional license and payment of royalties are necessary for encoding in connection with (i) data stored or replicated in physical media which is paid for on a title by title basis and/or (ii) data which is paid for on a title by title basis and is transmitted to an end user for permanent storage and/or use. Such additional license may be obtained from MPEG LA, LLC. See <http://www.mpegla.com> for additional details.

The iPhone Software contains MPEG-4 video encoding and/or decoding functionality. The iPhone Software is licensed under the MPEG-4 Visual Patent Portfolio License for the personal and non-commercial use of a consumer for (i) encoding video in compliance with the MPEG-4 Visual Standard ("MPEG-4 Video") and/or (ii) decoding MPEG-4 video that was encoded by a consumer engaged in a personal and non-commercial activity and/or was obtained from a video provider licensed by MPEG LA to provide MPEG-4 video. No license is granted or shall be implied for any other use.

Additional information including that relating to promotional, internal and commercial uses and licensing may be obtained from MPEG LA, LLC. See <http://www.mpegla.com>. For answers to frequently asked questions regarding use fees under the MPEG LA Visual Patent Portfolio License see www.apple.com/mpeg4 or www.apple.com/quicktime/products/qt/faq.html.

16. H.264/AVC Notice. The iPhone Software contains AVC encoding and/or decoding functionality, commercial use of H.264/AVC requires additional licensing and the following provision applies: THE AVC FUNCTIONALITY IN THE IPHONE SOFTWARE IS LICENSED HEREIN ONLY FOR THE PERSONAL AND NON-COMMERCIAL USE OF A CONSUMER TO (i) ENCODE VIDEO IN COMPLIANCE WITH THE AVC STANDARD ("AVC VIDEO") AND/OR (ii) DECODE AVC VIDEO THAT WAS ENCODED BY A CONSUMER ENGAGED IN A PERSONAL AND NON-COMMERCIAL ACTIVITY AND/OR AVC VIDEO THAT WAS OBTAINED FROM A VIDEO PROVIDER LICENSED TO PROVIDE AVC VIDEO. INFORMATION REGARDING OTHER USES AND LICENSES MAY BE OBTAINED FROM MPEG LA L.L.C. SEE [HTTP://WWW.MPEGLA.COM](http://WWW.MPEGLA.COM).

17. Yahoo Search Service Restrictions. The Yahoo Search Service available through Safari is licensed for use only in the following countries: Argentina, Aruba, Australia, Austria, Barbados, Belgium, Bermuda, Brazil, Bulgaria, Canada, Cayman Islands, Chile, Colombia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, France, Germany, Greece, Grenada, Guatemala, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Italy, Jamaica, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Panama, Peru, Philippines, Poland, Portugal, Puerto Rico, Romania, Singapore, Slovakia, Slovenia, South Korea, Spain, St. Lucia, St. Vincent, Sweden, Switzerland, Taiwan, Thailand, The Bahamas, Trinidad and Tobago, Turkey, UK, Uruguay, US and Venezuela.

EA0426

Update Rev. 4/28/08

NOTICES FROM APPLE

If Apple needs to contact you about your product or account, you consent to receive the notices by email. You agree that any such notices that we send you electronically will satisfy any legal communication requirements.

Attachment A-4

IPSLA ver. 3.0

ENGLISH

IMPORTANT: BY USING YOUR iPhone, YOU ARE AGREEING TO BE BOUND BY THE FOLLOWING APPLE AND THIRD PARTY TERMS:

- A. **APPLE iPhone SOFTWARE LICENSE AGREEMENT**
- B. **NOTICES FROM APPLE**
- C. **GOOGLE MAPS TERMS AND CONDITIONS**
- D. **YOUTUBE TERMS AND CONDITIONS**

APPLE INC. iPhone SOFTWARE LICENSE AGREEMENT Single Use License

PLEASE READ THIS SOFTWARE LICENSE AGREEMENT ("LICENSE") CAREFULLY BEFORE USING YOUR iPhone OR DOWNLOADING THE SOFTWARE UPDATE ACCOMPANYING THIS LICENSE. BY USING YOUR iPhone OR DOWNLOADING THIS SOFTWARE UPDATE, AS APPLICABLE, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS LICENSE, UNLESS YOU RETURN THE iPhone IN ACCORDANCE WITH APPLE'S RETURN POLICY. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENSE, DO NOT USE THE iPhone OR DOWNLOAD THIS SOFTWARE UPDATE. IF YOU DO NOT AGREE TO THE TERMS OF THE LICENSE, YOU MAY RETURN THE iPhone WITHIN THE RETURN PERIOD TO THE APPLE STORE OR AUTHORIZED DISTRIBUTOR WHERE YOU OBTAINED IT FOR A REFUND, SUBJECT TO APPLE'S RETURN POLICY FOUND AT http://www.apple.com/legal/sales_policies/.

1. General. The software (including Boot ROM code and other embedded software), documentation, interfaces, content, fonts and any data that came with your iPhone ("Original iPhone Software"), as may be updated or replaced by feature enhancements, software updates or system restore software provided by Apple ("iPhone Software Updates"), whether in read only memory, on any other media or in any other form (the Original iPhone Software and iPhone Software Updates are collectively referred to as the "iPhone Software") are licensed, not sold, to you by Apple Inc. ("Apple") for use only under the terms of this License. Apple and its licensors retain ownership of the iPhone Software itself and reserve all rights not expressly granted to you.

Apple will provide you any iPhone OS software updates that it may release from time to time, up to and including the next major iPhone OS software release following the version of iPhone OS software that originally shipped from Apple on your iPhone, for free. For example, if your iPhone originally shipped with iPhone 2.x software, Apple would provide you with any iPhone OS software updates it might release up to and including the iPhone 3.x software release. Such updates and releases may not necessarily include all of the new software features that Apple releases for newer iPhone models.

2. Permitted License Uses and Restrictions.

(a) Subject to the terms and conditions of this License, you are granted a limited non-exclusive license to use the iPhone Software on a single Apple-branded iPhone. Except as permitted in Section 2(b) below, this License does not allow the iPhone Software to exist on more than one Apple-branded iPhone at a time or on any other phone, and you may not distribute or make the iPhone Software available over a network where it could be used by multiple devices at the same time. This License does not grant you any rights to use Apple proprietary interfaces and other intellectual property in the design, development, manufacture, licensing or distribution of third party devices and accessories, or third party software applications, for use with the iPhone. Some of those rights are available under separate licenses from Apple. For more information on developing third party devices and accessories for the iPhone, please email madeforipod@apple.com. For more information on developing software applications for the iPhone, please email devprograms@apple.com.

(b) Subject to the terms and conditions of this License, you are granted a limited non-exclusive license to download iPhone Software Updates that may be made available by Apple for your model of the iPhone to

update or restore the software on any such iPhone that you own or control. This License does not allow you to update or restore iPhones that you do not control or own, and you may not distribute or make the iPhone Software Updates available over a network where they could be used by multiple devices or multiple computers at the same time. You may make one copy of the iPhone Software Updates stored on your computer in machine-readable form for backup purposes only, provided that the backup copy must include all copyright or other proprietary notices contained on the original.

(c) You may not and you agree not to, or to enable others to, copy (except as expressly permitted by this License), decompile, reverse engineer, disassemble, attempt to derive the source code of, decrypt, modify, or create derivative works of the iPhone Software or any services provided by the iPhone Software, or any part thereof (except as and only to the extent any foregoing restriction is prohibited by applicable law or to the extent as may be permitted by licensing terms governing use of open-sourced components included with the iPhone Software). Any attempt to do so is a violation of the rights of Apple and its licensors of the iPhone Software.

(d) By storing content on your iPhone you are making a digital copy. In some jurisdictions, it is unlawful to make digital copies without prior permission from the rightsholder. The iPhone Software may be used to reproduce materials so long as such use is limited to reproduction of non-copyrighted materials, materials in which you own the copyright, or materials you are authorized or legally permitted to reproduce.

(e) You agree to use the iPhone Software and the Services (as defined in Section 5 below) in compliance with all applicable laws, including local laws of the country or region in which you reside or in which you download or use the iPhone Software and Services.

3. Transfer. You may not rent, lease, lend, sell, redistribute, or sublicense the iPhone Software. You may, however, make a one-time permanent transfer of all of your license rights to the iPhone Software to another party in connection with the transfer of ownership of your iPhone, provided that: (a) the transfer must include your iPhone and all of the iPhone Software, including all its component parts, original media, printed materials and this License; (b) you do not retain any copies of the iPhone Software, full or partial, including copies stored on a computer or other storage device; and (c) the party receiving the iPhone Software reads and agrees to accept the terms and conditions of this License.

4. Consent to Use of Non-Personal Data.

(a) Diagnostic Data. You agree that Apple and its subsidiaries and agents may collect, maintain, process and use diagnostic, technical and related information, including but not limited to information about your iPhone, computer, system and application software, and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services to you (if any) related to the iPhone Software, and to verify compliance with the terms of this License. Apple may use this information, as long as it is in a form that does not personally identify you, to improve our products or to provide services or technologies to you.

(b) Location Data. Apple and its partners and licensees may provide certain services through your iPhone that rely upon location information. To provide these services, where available, Apple and its partners and licensees may transmit, collect, maintain, process and use your location data, including the real-time geographic location of your iPhone. The location data collected by Apple is collected in a form that does not personally identify you and may be used by Apple and its partners and licensees to provide location-based products and services. **By using any location-based services on your iPhone, you agree and consent to Apple's and its partners' and licensees' transmission, collection, maintenance, processing and use of your location data to provide such products and services.** You may withdraw this consent at any time by not using the location-based features or by turning off the Location Services setting on your iPhone. Not using these features will not impact the non location-based functionality of your iPhone. When using third party applications or services on the iPhone that use or provide location data, you are subject to and should review such third party's terms and privacy policy on use of location data by such third party applications or services.

5. Services and Third Party Materials.

(a) The iPhone Software enables access to Apple's iTunes Store, App Store and other Apple and third party services and web sites (collectively and individually, "Services"). Use of the Services requires Internet access and use of certain Services requires you to accept additional terms. By using this software in connection with an iTunes Store account, you agree to the latest iTunes Store Terms and Conditions, which you may access and review at <http://www.apple.com/legal/itunes/ww/>.

(b) You understand that by using any of the Services, you may encounter content that may be deemed offensive, indecent, or objectionable, which content may or may not be identified as having explicit language, and that the results of any search or entering of a particular URL may automatically and unintentionally generate links or references to objectionable material. Nevertheless, you agree to use the Services at your sole risk and that Apple shall have no liability to you for content that may be found to be offensive, indecent, or objectionable.

(c) Certain Services may display, include or make available content, data, information, applications or materials from third parties ("Third Party Materials") or provide links to certain third party web sites. By using the Services, you acknowledge and agree that Apple is not responsible for examining or evaluating the content, accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect of such Third Party Materials or web sites. Apple, its officers, affiliates and subsidiaries do not warrant or endorse and do not assume and will not have any liability or responsibility to you or any other person for any third-party Services, Third Party Materials or web sites, or for any other materials, products, or services of third parties. Third Party Materials and links to other web sites are provided solely as a convenience to you.

(d) Financial information displayed by any Services is for general informational purposes only and should not be relied upon as investment advice. Before executing any securities transaction based upon information obtained through the Services, you should consult with a financial or securities professional who is legally qualified to give financial or securities advice in your country or region. Location data provided by any Services is for basic navigational purposes only and is not intended to be relied upon in situations where precise location information is needed or where erroneous, inaccurate, time-delayed or incomplete location data may lead to death, personal injury, property or environmental damage. Neither Apple nor any of its content providers guarantees the availability, accuracy, completeness, reliability, or timeliness of stock information, location data or any other data displayed by any Services.

(e) You agree that the Services contain proprietary content, information and material that is owned by Apple and/or its licensors, and is protected by applicable intellectual property and other laws, including but not limited to copyright, and that you will not use such proprietary content, information or materials in any way whatsoever except for permitted use of the Services or in any manner that is inconsistent with the terms of this License or that infringes any intellectual property rights of a third party or Apple. No portion of the Services may be reproduced in any form or by any means. You agree not to modify, rent, lease, loan, sell, distribute, or create derivative works based on the Services, in any manner, and you shall not exploit the Services in any unauthorized way whatsoever, including but not limited to, using the Services to transmit any computer viruses, worms, trojan horses or other malware, or by trespass or burdening network capacity. You further agree not to use the Services in any manner to harass, abuse, stalk, threaten, defame or otherwise infringe or violate the rights of any other party, and that Apple is not in any way responsible for any such use by you, nor for any harassing, threatening, defamatory, offensive, infringing or illegal messages or transmissions that you may receive as a result of using any of the Services.

(f) In addition, Services and Third Party Materials that may be accessed from, displayed on or linked to from the iPhone are not available in all languages or in all countries. Apple makes no representation that such Services and Materials are appropriate or available for use in any particular location. To the extent you choose to access such Services or Materials, you do so at your own initiative and are responsible for compliance with any applicable laws, including but not limited to applicable local laws. Apple and its licensors reserve the right to change, suspend, remove, or disable access to any Services at any time without notice. In no event will Apple be liable for the removal of or disabling of access to any such

Services. Apple may also impose limits on the use of or access to certain Services, in any case and without notice or liability.

6. Termination. This License is effective until terminated. Your rights under this License will terminate automatically or otherwise cease to be effective without notice from Apple if you fail to comply with any term(s) of this License. Upon the termination of this License, you shall cease all use of the iPhone Software. Sections 7, 8, 9, 12 and 13 of this License shall survive any such termination.

7. Disclaimer of Warranties. YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, USE OF THE iPhone SOFTWARE AND SERVICES IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE iPhone SOFTWARE AND SERVICES PERFORMED BY THE iPhone SOFTWARE ARE PROVIDED "AS IS" AND "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND APPLE AND APPLE'S LICENSORS (COLLECTIVELY REFERRED TO AS "APPLE" FOR THE PURPOSES OF SECTIONS 7 AND 8) HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE iPhone SOFTWARE AND SERVICES, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. APPLE DOES NOT WARRANT AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE iPhone SOFTWARE AND SERVICES, THAT THE FUNCTIONS CONTAINED IN OR SERVICES PERFORMED BY THE iPhone SOFTWARE WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE iPhone SOFTWARE AND SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT ANY SERVICE WILL CONTINUE TO BE MADE AVAILABLE, THAT DEFECTS IN THE iPhone SOFTWARE OR SERVICES WILL BE CORRECTED, OR THAT THE iPhone SOFTWARE WILL BE COMPATIBLE OR WORK WITH ANY THIRD PARTY SOFTWARE, APPLICATIONS OR THIRD PARTY SERVICES. INSTALLATION OF THIS SOFTWARE MAY AFFECT THE USABILITY OF THIRD PARTY SOFTWARE, APPLICATIONS OR THIRD PARTY SERVICES. YOU FURTHER ACKNOWLEDGE THAT THE iPhone SOFTWARE AND SERVICES ARE NOT INTENDED OR SUITABLE FOR USE IN SITUATIONS OR ENVIRONMENTS WHERE THE FAILURE OR TIME DELAYS OF, OR ERRORS OR INACCURACIES IN, THE CONTENT, DATA OR INFORMATION PROVIDED BY THE iPhone SOFTWARE OR SERVICES COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE, INCLUDING WITHOUT LIMITATION THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, LIFE SUPPORT OR WEAPONS SYSTEMS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY APPLE OR AN APPLE AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY. SHOULD THE iPhone SOFTWARE OR SERVICES PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO THE ABOVE EXCLUSION AND LIMITATIONS MAY NOT APPLY TO YOU.

8. Limitation of Liability. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, IN NO EVENT SHALL APPLE BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, CORRUPTION OR LOSS OF DATA, FAILURE TO TRANSMIT OR RECEIVE ANY DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO YOUR USE OF OR INABILITY TO USE THE iPhone SOFTWARE AND SERVICES OR ANY THIRD PARTY SOFTWARE OR APPLICATIONS IN CONJUNCTION WITH THE iPhone SOFTWARE, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE) AND EVEN IF APPLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR PERSONAL INJURY, OR OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION MAY NOT APPLY TO YOU. In no event shall Apple's total liability to you for all damages (other than as may be required by applicable law in cases involving personal injury) exceed the

amount of two hundred and fifty dollars (U.S.\$250.00). The foregoing limitations will apply even if the above stated remedy fails of its essential purpose.

9. Digital Certificates. The iPhone Software contains functionality that allows it to accept digital certificates either issued from Apple or from third parties. YOU ARE SOLELY RESPONSIBLE FOR DECIDING WHETHER OR NOT TO RELY ON A CERTIFICATE WHETHER ISSUED BY APPLE OR A THIRD PARTY. YOUR USE OF DIGITAL CERTIFICATES IS AT YOUR SOLE RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, APPLE MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ACCURACY, SECURITY, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS WITH RESPECT TO DIGITAL CERTIFICATES.

10. Export Control. You may not use or otherwise export or reexport the iPhone Software except as authorized by United States law and the laws of the jurisdiction(s) in which the iPhone Software was obtained. In particular, but without limitation, the iPhone Software may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the iPhone Software, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use the iPhone Software for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons.

11. Government End Users. The iPhone Software and related documentation are "Commercial Items", as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States.

12. Controlling Law and Severability. This License will be governed by and construed in accordance with the laws of the State of California, excluding its conflict of law principles. This License shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. If for any reason a court of competent jurisdiction finds any provision, or portion thereof, to be unenforceable, the remainder of this License shall continue in full force and effect.

13. Complete Agreement; Governing Language. This License constitutes the entire agreement between you and Apple relating to the iPhone Software and supersedes all prior or contemporaneous understandings regarding such subject matter. No amendment to or modification of this License will be binding unless in writing and signed by Apple. Any translation of this License is done for local requirements and in the event of a dispute between the English and any non-English versions, the English version of this License shall govern, to the extent not prohibited by local law in your jurisdiction.

14. Third Party Acknowledgements. Portions of the iPhone Software may utilize or include third party software and other copyrighted material. Acknowledgements, licensing terms and disclaimers for such material are contained in the electronic documentation for the iPhone Software, and your use of such material is governed by their respective terms. Use of the Google Safe Browsing Service is subject to the Google Terms of Service (http://www.google.com/terms_of_service.html) and to Google's Privacy Policy (<http://www.google.com/privacypolicy.html>).

15. Use of MPEG-4; H.264/AVC Notice.

(a) The iPhone Software contains MPEG-4 video encoding and/or decoding functionality. The iPhone Software is licensed under the MPEG-4 Visual Patent Portfolio License for the personal and non-commercial use of a consumer for (i) encoding video in compliance with the MPEG-4 Visual Standard

("MPEG-4 Video") and/or (ii) decoding MPEG-4 video that was encoded by a consumer engaged in a personal and non-commercial activity and/or was obtained from a video provider licensed by MPEG LA to provide MPEG-4 video. No license is granted or shall be implied for any other use. Additional information including that relating to promotional, internal and commercial uses and licensing may be obtained from MPEG LA, LLC. See <http://www.mpegla.com>.

(b) The iPhone Software contains AVC encoding and/or decoding functionality, commercial use of H.264/AVC requires additional licensing and the following provision applies: THE AVC FUNCTIONALITY IN THE IPHONE SOFTWARE IS LICENSED HEREIN ONLY FOR THE PERSONAL AND NON-COMMERCIAL USE OF A CONSUMER TO (i) ENCODE VIDEO IN COMPLIANCE WITH THE AVC STANDARD ("AVC VIDEO") AND/OR (ii) DECODE AVC VIDEO THAT WAS ENCODED BY A CONSUMER ENGAGED IN A PERSONAL AND NON-COMMERCIAL ACTIVITY AND/OR AVC VIDEO THAT WAS OBTAINED FROM A VIDEO PROVIDER LICENSED TO PROVIDE AVC VIDEO. INFORMATION REGARDING OTHER USES AND LICENSES MAY BE OBTAINED FROM MPEG LA L.L.C. SEE [HTTP://WWW.MPEGLA.COM](http://WWW.MPEGLA.COM).

16. Yahoo Search Service Restrictions. The Yahoo Search Service available through Safari is licensed for use only in the following countries and regions: Argentina, Aruba, Australia, Austria, Barbados, Belgium, Bermuda, Brazil, Bulgaria, Canada, Cayman Islands, Chile, Colombia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, France, Germany, Greece, Grenada, Guatemala, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Italy, Jamaica, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Panama, Peru, Philippines, Poland, Portugal, Puerto Rico, Romania, Singapore, Slovakia, Slovenia, South Korea, Spain, St. Lucia, St. Vincent, Sweden, Switzerland, Taiwan, Thailand, The Bahamas, Trinidad and Tobago, Turkey, UK, Uruguay, US and Venezuela.

17. Microsoft Exchange Notice. The Microsoft Exchange mail setting in the iPhone Software is licensed only for over-the-air synchronization of information, such as email, contacts, calendar and tasks, between your iPhone and Microsoft Exchange Server or other server software licensed by Microsoft to implement the Microsoft Exchange ActiveSync protocol.

EA0535
Update Rev. 5/8/09

NOTICES FROM APPLE

If Apple needs to contact you about your product or account, you consent to receive the notices by email. You agree that any such notices that we send you electronically will satisfy any legal communication requirements.