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December 17, 2008

OUR FILE NUMBER
27559-152

VIA E-MAIL AND FAX

Fred von Lohmann
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

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Re: *iTunesDB Project on Bluwiki.com*

Mr. von Lohmann:

I write in response to your letter of December 3, 2008 regarding my correspondence to Mr. Sam Odio about the iTunesDB-related project on his site Bluwiki.com (the "Project"). Your letter—like your posting on the EFF website and your statements to the media—makes a central mistaken assumption about my client's objection to the Project: that the material posted on Bluwiki relates only to the iTunesDB file. But in fact, a large portion of the posted material also relates to Apple's FairPlay digital rights management (DRM) system and, consequently, violates the DMCA.

The "memcpy" function reproduced on the Project webpage entitled "itunes obfuscation" is part of the FairPlay DRM library. That function is used by both the iTunesDB signing mechanism and the FairPlay DRM system. Thus, the posting of that function compromises the DRM, which you must surely acknowledge is anti-circumvention technology within the scope of the DMCA. It should not come as a surprise that this code is part of the DRM, because the Project webpage "itunes obfuscation" states that the code protected by the obfuscation schemes being "reversed" may reside in the "fairplay DRM scheme."

Thus, the publication by the Project of information that can be used to circumvent the FairPlay DRM is a violation of sections 1201(a)(2) and/or 1201(b) of the DMCA. *See Universal City Studios v. Corley*, 273 F.3d 429 (2d Cir. 2001); *Universal City Studios v. Reimerdes*, 111 F.Supp.2d. 294, 325 (S.D.N.Y. 2000). Nor do your claims that this is merely "information," or that the posted code has limited "expressive purposes," preclude such a finding. *Reimerdes*, 111 F.Supp.2d. at 332. And because the anti-circumvention technology protects the rights of Apple's content providers in their copyrighted content, the violations have a clear "nexus" with copyright infringement, assuming without conceding that such a nexus is required.

The publication of the “memcpy” code also infringes Apple’s copyrights. The code was published in both assembly and high-level language formats and took up nearly nine pages. This is not merely a “snippet,” as you suggest, nor is it simply “illustrative”—it is Apple’s code. Nor should this be a surprise, given that the webpage admits that the code, and code like it, was “found [i]n Mac/Windows/iPhone disassemblies”—*i.e.*, disassemblies of the binary code found on Macs, Windows PCs, and iPhones. The publication of this code constitutes direct copyright infringement by your clients and, depending on the extent of their involvement in the Project, may also constitute contributory infringement because its publication provided material assistance to others who have copied or reproduced the code. Because of this direct infringement of Apple’s copyrights, moreover, the exemption of section 1201(f) is not applicable. *See* 17 U.S.C. 1201(f)(1).

For the foregoing reasons, Apple requests that the Bluwiki webpages in question remain disabled. Nothing in this letter is intended or shall be construed to be an express or implied waiver of any rights or remedies which Apple may possess in connection with this matter, all of which are hereby expressly reserved. Nor is this letter intended to be a complete recitation of the facts upon which this matter is based.

Sincerely,

Ian Ramage

Ian Ramage
for O'MELVENY & MYERS LLP