

EFF flips Bird the bird, says Boing Boing post doesn't violate copyright law



Enlarge / People ride shared dockless electric scooters along Venice Beach on August 13, 2018 in Los Angeles, California.
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According to a new letter published Friday by an Electronic Frontier Foundation lawyer, the scooter startup Bird significantly overstepped when it recently demanded that Boing Boing remove a post describing personal “conversion kits” that enable the removal of Bird’s proprietary hardware from a

seized scooter.

The fracas began on December 8, 2018, when Cory Doctorow, the longtime Boing Boing writer and famed science fiction author, wrote a post entitled: “\$30 plug-and-play kit converts a Bird scooter into a ‘personal scooter.’”

In it, Doctorow described the existence of kits that purport to allow someone to legally purchase an impounded Bird scooter and then alter it for personal use.

Bird did not take kindly to this post. On December 20, the company demanded that Boing Boing remove it. Bird’s lawyer, Linda Kwak, claimed that, simply by writing about the existence of these kits, Boing Boing violated the Digital Millennium Copyright Act.

“Mr. Doctorow’s blog encourages users to purchase this illegal product and even provides links to a website where such Infringing Product may be purchased,” she wrote. “To be clear, Bird scooters are not for sale. These products encourage illegal conduct.”

On Friday, EFF lawyer Kit Walsh, who represents Doctorow in this dustup, wrote to Kwak that Doctorow “has no obligation to, and will not, comply with your request to remove this article.”

As she continued:

We hope that you will re-evaluate your decision to send a “Notice of Infringement” regarding speech that does not in fact impinge on any of Bird’s rights. Journalists will continue to cover developments concerning Bird scooters, and Bird should not attempt to suppress coverage that it dislikes through meritless legal claims. Likewise, since the conversion kits do not appear to violate Section 1201, we hope that you will not seek to suppress the lawful distribution, use, or discussion of that technology.

It appears that the current exemption to the Section 1201 law that normally prohibits circumvention of digital locks is protected under the section that specifically allows for "Computer programs that are contained in and control the functioning of a lawfully acquired motorized land vehicle... when circumvention is a necessary step to allow the diagnosis, repair, or lawful modification of a vehicle function."

Kwak did not immediately respond to Ars' request for comment.

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