

# MONDAY MORNING: CALM, YOU NEED IT

Another manic Monday? Then you need some of Morcheeba's Big Calm combining Skye Edward's mellow voice with the Godfrey brothers' mellifluous artistry.

## **Apple's Friday-filed response to USDOJ: Nah, son**

You can read here Apple's response to the government's brief filed after Judge James Orenstein's order regarding drug dealer Jun Feng's iPhone. In a nutshell, Apple tells the government they failed to exhaust all their available resources, good luck, have a nice life. A particularly choice excerpt from the preliminary statement:

As a preliminary matter, the government has utterly failed to satisfy its burden to demonstrate that Apple's assistance in this case is necessary—a prerequisite to compelling third party assistance under the All Writs Act. *See United States v. N.Y. Tel. Co. ("New York Telephone")*, 434 U.S. 159, 175 (1977). The government has made no showing that it has exhausted alternative means for extracting data from the iPhone at issue here, either by making a serious attempt to obtain the passcode from the individual defendant who set it in the first place—nor to obtain passcode hints or other helpful information from the defendant—or by consulting other government agencies and third parties known to the government. Indeed, the government has gone so far as to claim that it has no obligation to do so, see DE 21 at 8, notwithstanding media reports that suggest that companies already offer commercial solutions capable of accessing data from phones running iOS 7, which is nearly three years old. See Ex. B [Kim Zetter, *How the Feds Could Get into iPhones Without*

*Apple's Help*, Wired (Mar. 2, 2016) (discussing technology that might be used to break into phones running iOS 7)]. Further undermining the government's argument that Apple's assistance is necessary in these proceedings is the fact that only two and a half weeks ago, in a case in which the government first insisted that it needed Apple to write new software to enable the government to bypass security features on an iPhone running iOS 9, the government ultimately abandoned its request after claiming that a third party could bypass those features *without Apple's assistance*. See Ex. C [*In the Matter of the Search of an Apple iPhone Seized During the Execution of a Search Warrant on a Black Lexus IS300, Cal. License Plate #5KGD203* ("In the Matter of the Search of an Apple iPhone" or the "San Bernardino Matter"), No. 16-cm-10, DE 209 (C.D. Cal. Mar. 28, 2016)]. In response to those developments, the government filed a perfunctory letter in this case stating only that it would not modify its application. DE 39. The letter does not state that the government attempted the method that worked on the iPhone running iOS 9, consulted the third party that assisted with that phone, or consulted other third parties before baldly asserting that Apple's assistance remains necessary in these proceedings. See *id.* The government's failure to substantiate the need for Apple's assistance, alone, provides more than sufficient grounds to deny the government's application.

Mm-hmm. That.

**Dieselpgate: Volkswagen racing toward deadline**

▪ Thursday, April 21 is the

extended deadline for VW to propose a technical solution for ~500,000 passenger diesel cars in the U.S. (Intl Business Times) – The initial deadline was 24-MAR, establishing a 30-day window of opportunity for VW to create a skunkworks team to develop a fix. But if a team couldn't this inside 5-7 years since the cars were first sold in the U.S., another 30 days wouldn't be enough. Will 60 days prove the magical number? Let's see.

- VW may have used copyrighted hybrid technology without paying licensing (Detroit News) – What the heck was going on in VW's culture that this suit might be legitimate?
- After last month's drop-off in sales, VW steps up discounting (Reuters) – Trust in VW is blamed for lackluster sales; discounts aren't likely to fix that.

#### **Once around the kitchen**

- California's winter rains not enough to offset long-term continued drought (Los Angeles Times) – Op-ed by Jay Famiglietti, senior

water scientist at the NASA  
Jet Propulsion  
Laboratory–Pasadena and UC-  
Irvine’s professor of Earth  
system science. Famiglietti  
also wrote last year’s  
gangbuster warning about  
California’s drought and  
incompatible water usage.

- Western scientists meet with  
North Korean scientists on  
joint study of Korean-  
Chinese volcano (Christian  
Science Monitor) – This  
seems quite odd, that NK  
would work in any way with  
the west on science. But  
there you have it, they are  
meeting over a once-dormant  
nearly-supervolcano at the  
Korea-china border.
- BTW: Deadline today for bids  
on Yahoo.

There you are, your week off to a solid start.  
Catch you tomorrow morning!