Platforms, DRM and Interoperability

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• Consumer protection
  – Norway, Nanterre court
  – Information asymmetry
  – “Unfair terms”?

• Copyright
  – EU:
    ▪ Article 6 Software Directive (?)
    ▪ Copyright Directive (-)
  – U.S.:
    ▪ Sega Enterprises v. Accolade (9th Cir. 1992); Sony v. Connectix (9th Cir. 2000)
    ▪ § 1201 (f) DMCA (?)
  – But:
    ▪ What is a computer program?
    ▪ Code obfuscation, continuous updates
  – French interoperability provision does not apply if
    ▪ All copyright holders consent
    ▪ A security risk exists

**Antitrust**
- Charoensak v. Apple (N.D. Cal.)
- Market definition
  - Substitutes/SSNIP test with continuously changing consumption patterns?
- Refusal to license in the EU
  - Magill/IMS Health: new product? Security as objective justification?
  - Microsoft: balancing approach?
- Refusal to license in the U.S.
  - "The mere possession of monopoly power … is not only not unlawful; it is an important element of the free-market system."
- General problem: Apple does not prevent interoperability, it makes it hard for users.

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**Printer cartridges**
- Lexmark v. Static Control Components (6th Cir. 2004)
- But: patent law, Arizona Cartridge Remanufacturers Ass’n v. Lexmark (9th Cir. 2005): “Lock-out chip” does not exceed patent protection (based on repair/reconstruction doctrine)
• Cell phones
  − U.S. Copyright Office: DMCA exemption (November 2006)
  − German Supreme Court in civil matters: distributing unlocked cell phones violates European trademark law

• Game consoles
  − Sony v. Connectix (9th Cir. 2000): reverse engineering is a fair use
  − Davidson v. Jung (8th Cir. 2005): reverse engineering violates DMCA
  − EU: Article 6 Software Directive?
3. General Remarks


• General debate
  - Static v. dynamic analysis
  - Effects on innovation, prices, expenditures on reverse engineering etc.
  - IP/antitrust, standardization, network effects

• Sell blades & give away the razor
  - Just another means to restrict substitutability on the secondary market
  - Welfare-decreasing models: Chicago versus Post Chicago, Kodak
  - Welfare-enhancing models: Price discrimination and Ramsey pricing
  - Behavioral law and economics: rational reaction to myopic consumers?

• Literature on multi-sided markets
  - Tying as a tool to ensure cross-side network externalities? (online music)
  - Tying as a tool to enable pricing strategies in multihoming environments? (cell phones, video games)

• Open issues
  - Meta model?
  - For the most part, general discussion about interoperability
  - Antitrust & IT security: obfuscating code & business strategies
  - Code obfuscation as a strengthening of IP rights ⇒ Kitch 2.0?