

Platforms, DRM and Interoperability

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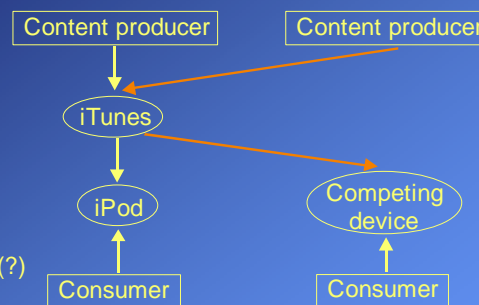
1. Sell the Razor 2. Sell the Blades 3. General Remarks

- Consumer protection

- Norway, Nanterre court
- Information asymmetry
- “Unfair terms”?

- Copyright

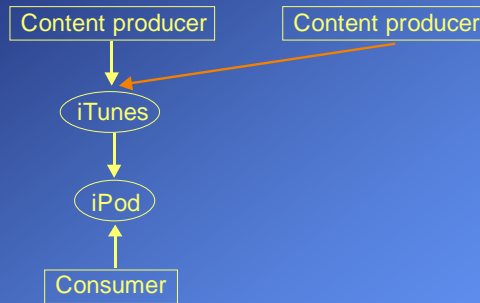
- EU:
 - Article 6 Software Directive (?)
 - Copyright Directive (-)
- U.S.:
 - Sega Enterprises v. Accolade (9th Cir. 1992); Sony v. Connectix (9th Cir. 2000)
 - § 1201 (f) DMCA (?)
- But:
 - What is a computer program?
 - Code obfuscation, continuous updates
- French interoperability provision does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



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• Antitrust

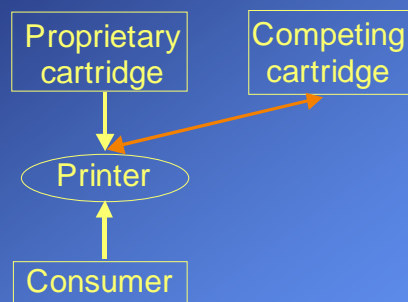
- VirginMega v. Apple (Conseil de la Concurrence, 2004)
- Charoensak v. Apple (N.D. Cal.)
- Market definition
 - Substitutes/SSNIP test with continuously changing consumption patterns?
- Refusal to license in the EU
 - Magill/IMS Health: new product? Security as objective justification?
 - Microsoft: 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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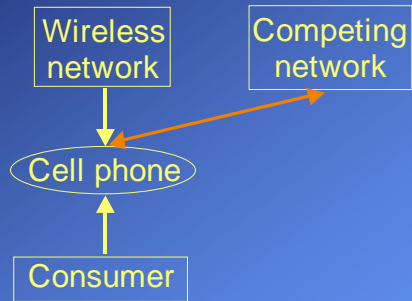
• Printer cartridges

- 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)
- EU: no specific case law, but Directive on waste electrical equipment (2003)



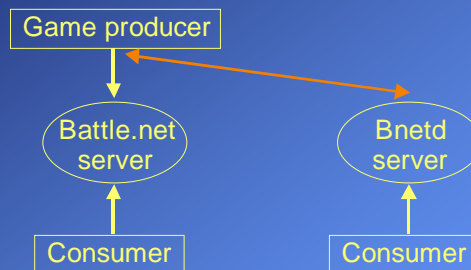
- Cell phones

- 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?



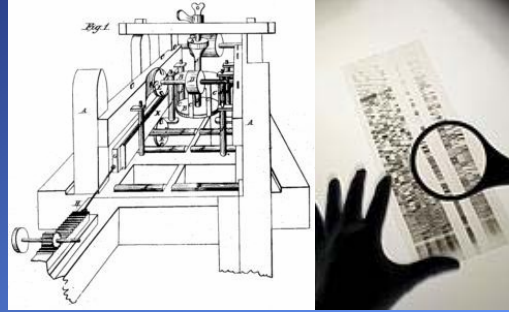
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- General debate

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

- Sell blades & give away the razor

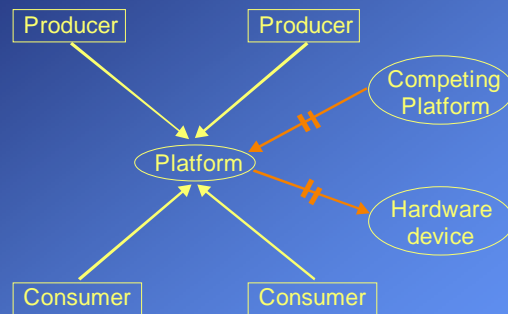
- Just another means to restrict substitutability on the secondary market
- Welfare-decreasing models: Chicago versus Post Chicago, Kodak
- Welfare-enhancing models: Price discrimination and Ramsey pricing
- Behavioral law and economics: rational reaction to myopic consumers?



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- 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?



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