Models of Consumer Protection in DRM

Dan L. Burk, University of Minnesota Law School
Julie E. Cohen, Georgetown University Law Center
Parallel Debates

• DRM: What does consumer protection require?
• Copyright: Who are users and what do they require?
Parallel Debates

- DRM: What does consumer protection require?
  - Anticircumvention regimes highly rigid
  - “Consumer protection” potentially liberatory

- Copyright: Who are users and what do they require?
  - “Consumer” too narrow/passive
Five Models of Consumer Protection in DRM

- Allocative
- Civil Libertarian
- Proceduralist
- Constitutive
- Plug-and-Play
Allocative Protection

• Baseline = levies
• Relative to this baseline, DRM itself protects consumers
  – Fairer pricing
  – Lowered risk of corruption/capture
• Anticircumvention laws protect pricing
• Agenda:
  – Repeal levies
  – Enact/enforce anticircumvention laws
Civil Libertarian Protection

• Baseline = world without DRM
• Relative to this baseline, consumer protection requires freedom to tinker
• Anticircumvention laws frustrate consumer protection
• Agenda:
  – Repeal/weaken anticircumvention laws
Proceduralist Protection

• Baseline = a question for copyright policymakers
• Market for DRM requires accurate information
• Anticircumvention laws necessitate heightened disclosure
• Agenda:
  – Enact/enforce disclosure requirements
## Similar Baselines, After All?

<table>
<thead>
<tr>
<th></th>
<th>Pricing</th>
<th>Functionality</th>
<th>Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allocative</td>
<td>Market</td>
<td>Market</td>
<td>Market</td>
</tr>
<tr>
<td>Civil Libertarian</td>
<td>Market</td>
<td>Market</td>
<td>Hackers</td>
</tr>
<tr>
<td>Proceduralist</td>
<td>Market</td>
<td>Market</td>
<td>Regulated</td>
</tr>
</tbody>
</table>
Constitutive Protection

- Baseline = user ability to interact with digital content
- Relative to this baseline, “consumer” protection obligations are substantive
- Anticircumvention laws are problematic, but not the principal impediment
- Agenda
  - Open up standards processes
  - Establish user-protective defaults and institutions
  - Modify anticircumvention laws
## Conceptual Baselines, Revisited

<table>
<thead>
<tr>
<th>Allocative</th>
<th>Pricing</th>
<th>Functionality</th>
<th>Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil Libertarian</td>
<td>Market</td>
<td>Market</td>
<td>Hackers</td>
</tr>
<tr>
<td>Proceduralist</td>
<td>Market</td>
<td>Market</td>
<td>Regulated</td>
</tr>
<tr>
<td>Constitutive</td>
<td>Market</td>
<td>Code Defaults; Institutions; Anticirc. Exceptions</td>
<td>Open Standards/ Design Processes</td>
</tr>
</tbody>
</table>

Burk & Cohen 09 Mar 2007
Plug-and-Play Protection

- Baseline = consumer expectations re portability across devices and platforms
- Relative to this baseline, DRM markets may require supervision
- Anticircumvention laws generally beneficial if portability exists
- Agenda:
  - Enact/enforce interoperability mandates
  - Or, coordinate interoperability agreements
## Conceptual Baselines, Again

<table>
<thead>
<tr>
<th>Constitutive</th>
<th>Pricing</th>
<th>Functionality</th>
<th>Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Market</td>
<td>Code Defaults; Institutions; Anticirc. Exceptions</td>
<td>Open Standards/Design Processes</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Plug and Play</th>
<th>Pricing</th>
<th>Functionality</th>
<th>Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Market</td>
<td>Interoperability Mandate?</td>
<td>Market</td>
<td></td>
</tr>
</tbody>
</table>
DRM in Sociotechnical Perspective

“Technologies” are shaped by interactions between social systems and technical systems:
– Technical affordances and limits
– Political and economic interests
– Organizing narratives
Organizing Narratives and Consumer Protection in DRM

• “Consumers” want clarity and convenience
• “Regulation” stifles “innovation”
  – Functionality
  – Pricing
• Threat of rampant “piracy” requires narrow range of motion
• Hacker threat requires closed design process and secret standards