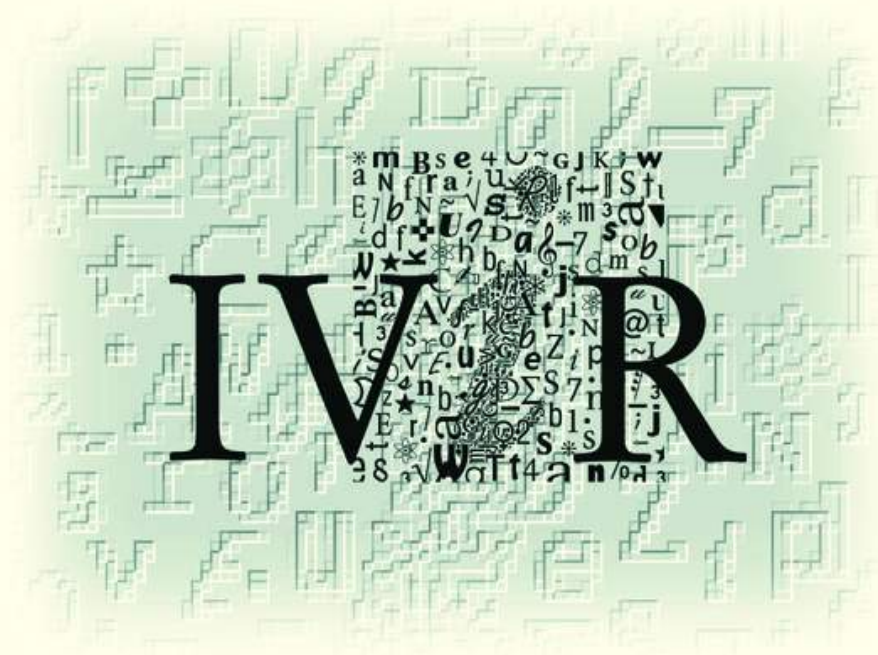


DRM as a matter of iConsumer law



Berkeley, March 10

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Why consumer law is the right place

Consumer law regulates the relationship between consumers and enterprises.

Rationales of consumer law

Economic

Ideological

- Fair deal/fair price
- Help to self help
- Correcting asymmetries
- Competition

◦ Market integration

◦ Autonomy

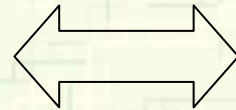
◦ Justice

- Basic consumer rights
- Public policy

The 2 approaches of consumer law

Information

- Help to self-help
- Minimum intervention
- Providing information needed to make informed choices



Intervention

- Help the consumer
- More active role (welfare) state
- Intervention with substance contracts, marketing practices, etc.

The iConsumer in the Information model

- Obligations to inform consumers about essential characteristics of a product or service, e.g.:
 - Ability to play on different devices
 - Installation of unwanted software
 - Hidden monitoring
 - Ability to make private copies?
- Prohibitions on unfair commercial practices, non-conformity, product liability

The iConsumer in the intervention model

- Rules that govern **marketing**
 - Misleading advertising
 - Unfair and aggressive marketing practices
- Rules that govern **contracting**
 - Unfair contract terms
- Rules that govern **product quality**
 - Non-conformity
 - Product liability

DRM-protected CDs as defective product

Main rule: consumer *goods* should “show the quality and performance which are normal in goods of the same type and which the consumer *can reasonably expect*”:

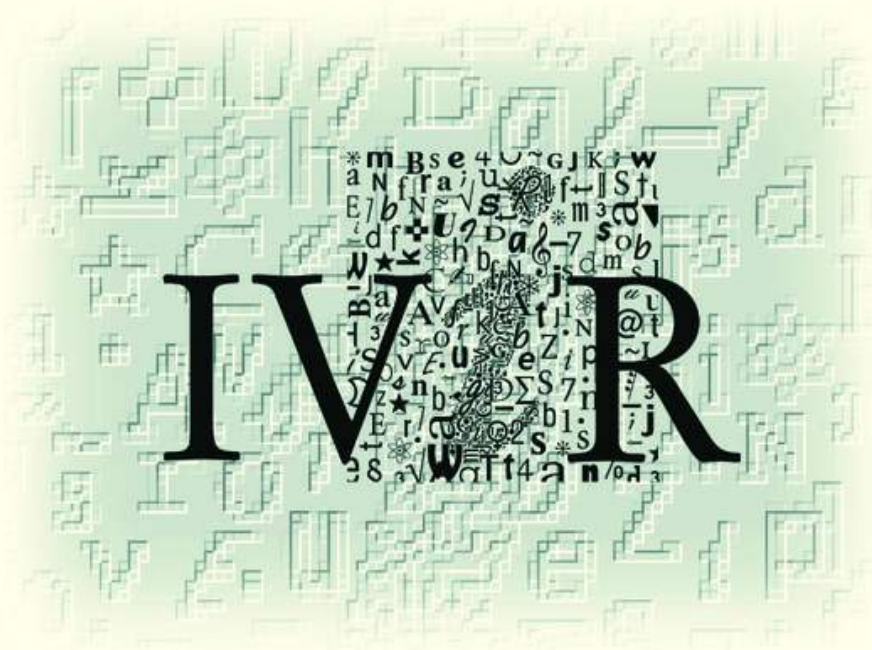
- Compatibility with end-user equipment
- Possibility of private copying?
- Remedies: repair, replacement, price reduction

What (not) to expect from iConsumer law

- Consumer law *cannot*:
 - Create choices
 - Set standards for fair DRM use
- Consumer law *can*:
 - Promote fairness in relation consumer-DRM user
 - Ensure product quality
 - Assist the iConsumer in making choices: vote with her purse

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