

**RIGHTS MANAGEMENT INFORMATION:  
CURRENT ISSUES IN THE LEGAL  
FRAMEWORK**

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"It's 1996 all over again..."

**The basics**

**The two main prohibitions in RMIs**

**WCT Art 12**

(1) Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by this Treaty or the Berne Convention:

- (i) to remove or alter any electronic rights management information without authority;
- (ii) to distribute, import for distribution, broadcast or communicate to the public, without authority, works or copies of works knowing that electronic rights management information has been removed or altered without authority.

(2) As used in this Article, "rights management information" means information which identifies the work, the author of the work, the owner of any right in the work, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work or appears in connection with the communication of a work to the public.

**European Copyright Directive (2001/29/EC)**

**Article 7, Obligations concerning rights-management information**

1. Member States shall provide for adequate legal protection against any person knowingly performing without authority any of the following acts:

- (a) the removal or alteration of any electronic rights-management information;
- (b) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject-matter protected under this Directive or under Chapter III of Directive 96/9/EC from which electronic rights-management information has been removed or altered without authority,

if such person knows, or has reasonable grounds to know, that by so doing he is inducing, enabling, facilitating or concealing an infringement of any copyright or any rights related to copyright as provided by law, or of the sui generis right provided for in Chapter III of Directive 96/9/EC.

2. For the purposes of this Directive, the expression "rights-management information" means any information provided by right holders which identifies the work or other subject-matter referred to in this Directive or covered by the sui generis right provided for in Chapter III of Directive 96/9/EC, the author or any other rightholder, or information about the terms and conditions of use of the work or other subject-matter, and any numbers or codes that represent such information.

**UK CDPA**

**296ZG Electronic rights management information**

(1) This section applies where a person (D), knowingly and without authority, removes or alters electronic rights management information which -

- (a) is associated with a copy of a copyright work, or
- (b) appears in connection with the communication to the public of a copyright work, and

where D knows, or has reason to believe, that by so doing he is inducing, enabling, facilitating or concealing an infringement of copyright.

(2) This section also applies where a person (E), knowingly and without authority, distributes, imports for distribution or communicates to the public copies of a copyright work from which electronic rights management information -

- (a) associated with the copies, or
- (b) appearing in connection with the communication to the public of the work, has been removed or altered without authority and where E knows, or has reason to believe, that by so doing he is inducing, enabling, facilitating or concealing an infringement of copyright. [...]

(7) (b) "rights management information" means any information provided by the copyright owner or the holder of any right under copyright which identifies the work, the author, the copyright owner or the holder of any intellectual property rights, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information.

**U.S. Code Title 17, Chapter 12**

**§ 1202. Integrity of copyright management information**

**False Copyright Management Information.—**

(a) No person shall knowingly and with the intent to induce, enable, facilitate, or conceal infringement—

- (1) provide copyright management information that is false, or
- (2) distribute or import for distribution copyright management information that is false.

(b) **Removal or Alteration of Copyright Management Information.—** No person shall, without the authority of the copyright owner or the law—

- (1) intentionally remove or alter any copyright management information,
- (2) distribute or import for distribution copyright management information knowing that the copyright management information has been removed or altered without authority of the copyright owner or the law, or
- (3) distribute, import for distribution, or publicly perform works, copies of works, or phonorecords, knowing that copyright management information has been removed or altered without authority of the copyright owner or the law,

knowing, or, with respect to civil remedies under section 1203, having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any right under this title.

**U.S. Definition**

As used in this section, the term "copyright management information" means any of the following information conveyed in connection with copies or phonorecords of a work or performances or displays of a work, including in digital form, except that such term does not include any personally identifying information about a user of a work or of a copy, phonorecord, performance, or display of a work:

- (1) The title and other information identifying the work, including the information set forth on a notice of copyright.
- (2) The name of, and other identifying information about, the author of a work.
- (3) The name of, and other identifying information about, the copyright owner of the work, including the information set forth in a notice of copyright.
- (4) With the exception of public performances of works by radio and television broadcast stations, the name of, and other identifying information about, a performer whose performance is fixed in a work other than an audiovisual work.
- (5) With the exception of public performances of works by radio and television broadcast stations, in the case of an audiovisual work, the name of, and other identifying information about, a writer, performer, or director who is credited in the audiovisual work.
- (6) Terms and conditions for use of the work.
- (7) Identifying numbers or symbols referring to such information or links to such information.
- (8) Such other information as the Register of Copyrights may prescribe by regulation, except that the Register of Copyrights may not require the provision of any information concerning the user of a copyrighted work.

**Sanctions**

- Emphasis in legislation for removal of RMI's.
- Legitimacy: actions can be brought by owner or exclusive licensee.
- Civil:
  - USA: actual and statutory damages
  - UK: same remedies as with copyright infringement
  - Australia: injunction and damages (additional damages)

**Criminal:**

- UK: Could exist, but unlikely
- USA: § 1204: willful infringement for purposes of commercial advantage or private financial gain
  - 5 years first offence
  - 10 years repeat offences

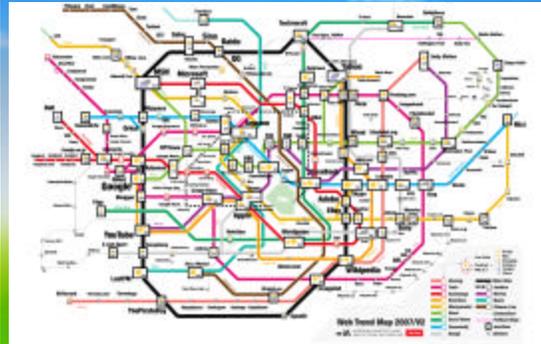


...has some worthy content...



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...lots of it...



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User Generated Content expanding

- Blogging
- Social networks (EULA)
- YouTube
- Comments
- Tagging
- Machinima
- Second Life



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## Enforcement



IQ Group, Ltd. v. Weisner Publishers

**409 F. Supp.2d 587, 597 (D.N.J. 2006)**

- Test for RMI's in the United States:
- Case involves the removal of a logo and a hyperlink. IQ Group forwarded an ad from Weisner Publishers where they removed a logo and link, so that communications would go to them instead of IQ Group.
- The Court explained that under Section 1202, it must determine whether the information allegedly removed "functioned as a component of an automated copyright protection or management system."
- [...] the IQ logo removed by Wiesner did not function as a component of an automated copyright protection or management system, it does not fall within the definition of "copyright management information" in 17 U.S.C. § 1202(c)."

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McClatchey v AP

**35 Media L. Rep. 1885**

- Copyright infringement case including claim for removing and distributing false copyright information in violation of the DMCA, 17 U.S.C. § 1202(a)
- Valencia McClatchey took a picture of United Airlines 93 crash, which she often licensed for one-use only to news agencies.
- Gene Puskar, an AP photographer, took a picture of her picture and sold it to AP. It is claimed that he cropped the image to remove the copyright notice and McClatchey's name. AOL and other sources were using the cropped image.
- AP claimed that copyright notices are not RMIs.
- Software was used to place "the title, her name and the copyright notice on all printouts of the photograph", which is an RMI as far as the court is concerned.

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## Cybersky TV

### District Court of Hamburg (2005), Case Ref 312 O 1106/04

- Cybersky TV is P2P-enabled software in Germany that allows the decoding of pay TV.
- Cybersky can be "trained" to recognise particular files used to encode the content. The software can remove such information.
- Cybersky TV does not directly unencode the content, but it is instrumental in removing files that do so.
- Cybersky was found liable of the German transposition of the ECD.

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## Polar Bear v Timex

### 2004 U.S. App. LEXIS 22131

- Copyright infringement case from 1995, where sports-equipment provider Timex was sued for copyright infringement of images used in its publicity.
- No relation whatsoever to RMIs, other than a late amended claim in order to obtain higher attorney's fees.
- The courts both in first instance and in the appeals court found the claim spurious.

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## Privacy



## iTunes Plus

- iTunes Plus sells music without technological protection measures.
- However, it embeds user's full name and account e-mail into the file.
- Is this RMI?
  - "information which identifies the work, the author of the work, the owner of any right in the work, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work or appears in connection with the communication of a work to the public."
- Software already available that removes this information
  - Privatunes

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## § 1201 U.S. Code Title 17, Chapter 12

### (i) Protection of Personally Identifying Information.

(1) Circumvention permitted.

*[it is permissible] for a person to circumvent a technological measure that effectively controls access to a work protected under this title, if—*

- (A) the technological measure, or the work it protects, contains the capability of collecting or disseminating personally identifying information reflecting the online activities of a natural person who seeks to gain access to the work protected;
- (B) in the normal course of its operation, the technological measure, or the work it protects, collects or disseminates personally identifying information about the person who seeks to gain access to the work protected, without providing conspicuous notice of such collection or dissemination to such person, and without providing such person with the capability to prevent or restrict such collection or dissemination;
- (C) the act of circumvention has the sole effect of identifying and disabling the capability described in subparagraph (A), and has no other effect on the ability of any person to gain access to any work; and
- (D) the act of circumvention is carried out solely for the purpose of preventing the collection or dissemination of personally identifying information about a natural person who seeks to gain access to the work protected, and is not in violation of any other law.

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## Data Protection: personal data

Personal data is data which relates to a living individual who can be identified from that data, or with other data likely to be held by data controller

Sensitive personal data means personal data consisting of information as to:

- the racial or ethnic origin of the data subject,
- his political opinions,
- his religious beliefs or other beliefs of a similar nature,
- whether he is a member of a trade union
- his physical or mental health or condition,
- his sexual life,
- the commission or alleged commission by him of any offence, or
- any proceedings for any offence committed or alleged to have been committed by him.

Cf Lindqvist ECJ Case C-101/01

- The mere mentioning of a person on a web page or use of their photo is "processing of personal data".
- However, placing the data online is also an export of personal data

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**Exceptions to personal data**

**Article 13 95/46/EC**  
Exemptions and restrictions

1. Member States may adopt legislative measures to restrict the scope of the obligations and rights provided for in Articles 6 (1), 10, 11 (1), 12 and 21 when such a restriction constitutes a necessary measures to safeguard: [...]

- (d) the prevention, investigation, detection and prosecution of criminal offences, or of breaches of ethics for regulated professions; [...]
- (g) the protection of the data subject or of the rights and freedoms of others.

**P2P and privacy**

- Despite reluctance from ISPs, so-called "John Doe" P2P litigation is increasingly successful.
- Verizon v RIAA
- U.S. universities are increasingly willing to provide user information upon request.
- However, large volumes of Bittorrent traffic now is encrypted to bypass bandwidth throttling.

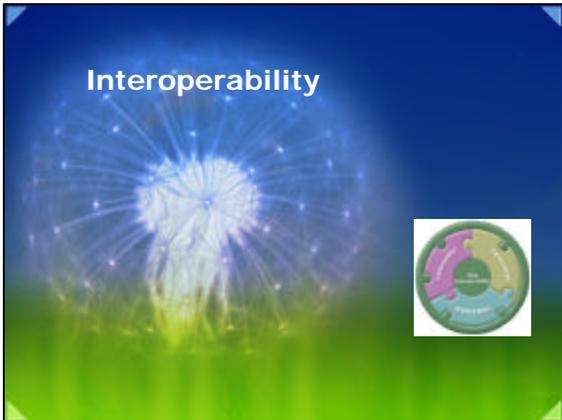
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**French decision**

**Conseil d'Etat June 13 2007**

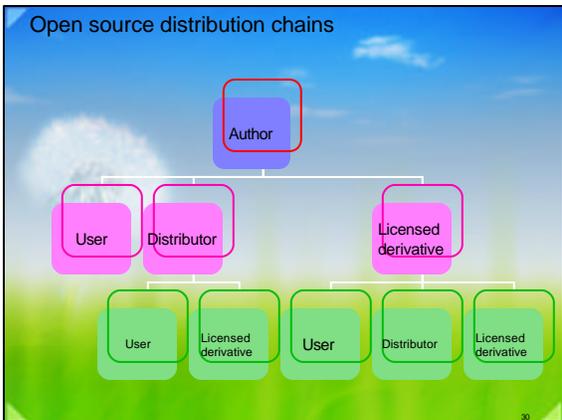
- The French Administrative court, Conseil d'Etat has overturned the decision by the French Data Protection Authority which had refused to authorise the tracking of P2P users by music societies.
- The societies will now re-apply and almost certainly be granted authorisation for their automated program of P2P monitoring.

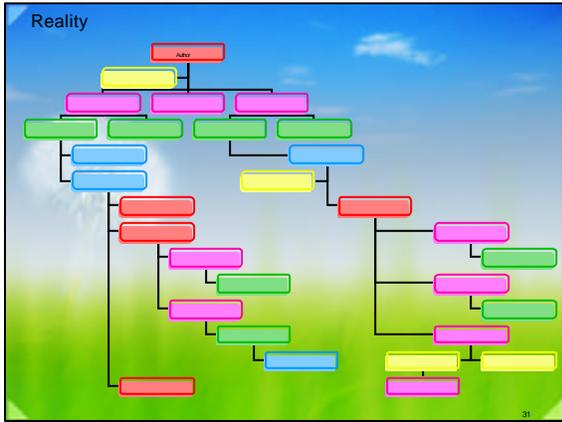
**Interoperability**



**Open source software licences**

- A typical example of bad (not to say non-existent) rights management strategies.
- 67% of open source software projects use General Public License (GPL) v2.
- 60 licences approved by the Open Source Initiative.
- Incompatibility with GPL v3.
- Incompatibility with other OSS licences.





### Ohloh

Ohloh Summary

- Mostly written in C/C++
- Very large, active development team
- Mature, well-established codebase
- ⚠ Mozilla Public License 1.0 may conflict with OFL
- ⚠ Apache Software License may conflict with GPL

Average Rating  
 ★★★★★  
 (4.6/5.0)  
 Based on 241 user ratings.

Your Rating  
 ★★★★★  
 Click to rate this project.

### Open Source License Checker

Open Source License Checker - Summary

Summary of license information, including a list of licenses and their details.

### CC licence elements

- Attribution (BY):** AND
- Non-commercial (NC):** The work can be copied, displayed and distributed by the public, but only if these actions are for non-commercial purposes.
- No derivative works (ND):** This licence grants baseline rights, but it does not allow derivative works to be created from the original.
- Share-Alike (SA):** OR  
 Derivative works can be created and distributed based on the original, but only if the same type of licence is used, which generates a "viral" licence.

### Types of licence

BY		Attribution
BY-NC		Attribution - Non Commercial
BY-SA		Attribution - Share Alike
BY-ND		Attribution - No Derivatives
BY-NC-SA		Attribution - Non Commercial - Share Alike
BY-NC-ND		Attribution - Non Commercial - No Derivatives



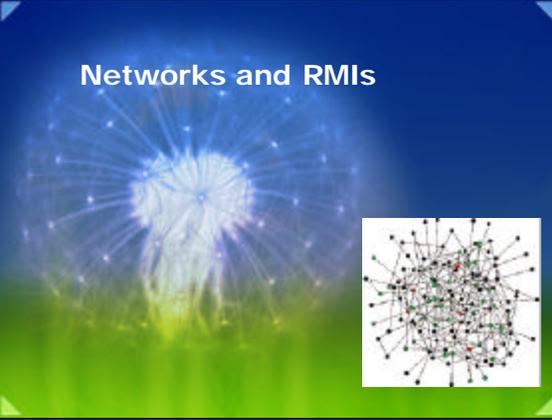
### Problems

- Patent thickets?
  - “blocking patents”
  - “hold-ups”
  - Commercial advantage of a patented standard could result on a monopoly.
- Patent disputes common in hardware
  - VESA: VL-bus standard, for which DELL held patents
  - Rambus DRAM
- U.S. Patent 5,715,403 on a “system for controlling the distribution and use of digital works having attached usage rights where the usage rights are defined by a usage rights grammar.”

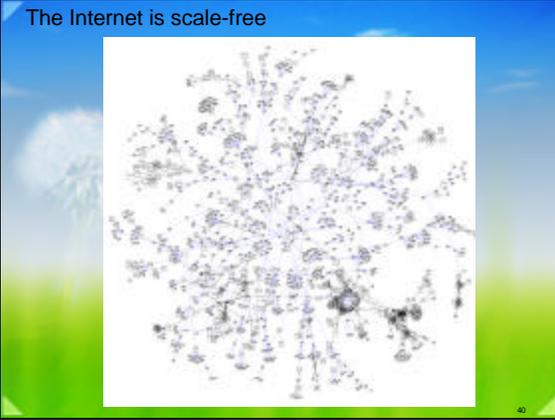
### Solutions

- RAND (Reasonable and Non-Discriminatory) rules
- “United we stand”:
  - Patent pools
  - Industry associations
- Trust Anti-trust law:
  - July 2007: Federal Trade Commission (FTC) orders Rambus to cap its license fees “to remedy the effects of the unlawful monopoly Rambus established in the markets.”
  - August 2007: European Commission has declared Rambus abused its position by holding vital patent information at meetings.

## Networks and RMIs



## The Internet is scale-free

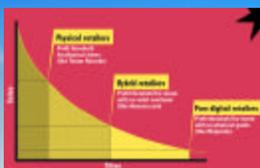
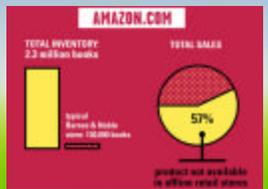


### Characteristics of scale-free networks

Connectedness: “Six degrees of separation”  
 Accumulation of links: “the rich get richer”  
 Hyper-accumulation of links: “the winner takes all”  
 Pareto distribution: 80-20 rule  
 Tipping points, cascading effects, mob behaviour  
 Robustness: resilient to random attacks  
 Potential vulnerability if super hubs are removed

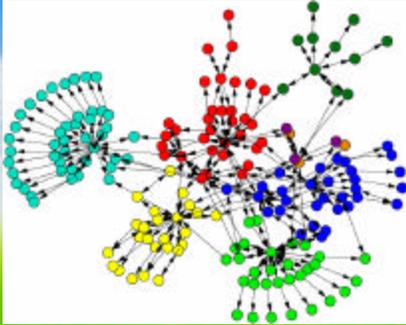


### RMI: new copyright policy for the long tail economy

Amazon.com statistics:  
 TOTAL INVENTORY: 2.3 million books  
 TOTAL SALES: 57%  
 product not available in offline retail stores

RMI's: charting the Web's content ecology



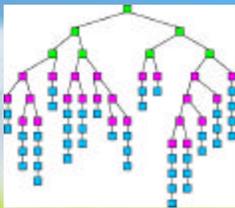
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RMI: P2P and enforcement



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Cascading failures



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Concluding...



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