

Chief Treasures of the World

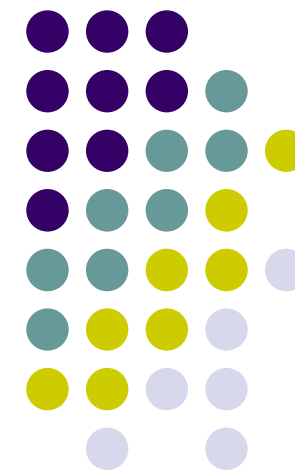
what happens when law is used to protect
the technologies that protect copyright



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Old Law, New Bottles



- digital copyright
 - challenging the economics of ip
 - how to maintain artificial scarcity? (a packaging problem)
- bottles (and other laws of cyberspace)
- what kind of bottles will the new law drink from?
 - fanning's free beer chug-a-lug
 - valenti's pricey wine-by-the-sip

TPMs



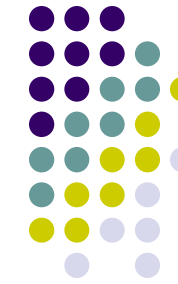
- tpms are 'virtual fences' around digitized content
- tpms can also be used to restrict the ability to access a digitized work
- tpms can be used to control use of the work
- in its best sense, a tpm is a technological protection measure intended to promote the authorized use of a digital work
- wipo - LPMS (for tpms)

TPMs / DRMs



- tpms can be used to create **drms**
 - (i) a **licensing arrangement** which establishes the terms of use for the underlying work
 - (ii) a **database** containing information identifying the content and rights holders of a work
 - (iii) **surveillance technologies** that monitor and meter customers' use of its products

DRMs (the license)



- one concern is that drms exploit contract law to create rights for content owners not afforded by copyright law

[ie, it uses private law to reallocate public goods...]

DRMs (the database)



- the database stores:
 - the contents of a particular work subject to copyright
 - the various rights holders associated with the work
- the database utilizes **surveillance technologies** to identify/monitor activities of:
 - individual consumers who seek to access or use a work
 - the consumer's computer(s) and associated software

DRMs - Digital Routine Monitoring??



- if tpm is a virtual fence, drm is a virtual surveillance system
- surveillance features are crucial to the technological enforcement of the licensing component
(without surveillance, drm is just a souped-up standard form contract)
- drms enable automated collection and exchange of various kinds of information
 - about particular users
 - their habits
 - their particular uses of the digital material

Greenleaf



“Privacy’s relationship to copyright is that the right to experience intellectual works in private – free from surveillance – is part of the public domain aspect of copyright works.”

“Free”dom of expression

- Speakers & listeners in the expression marketplace
- Original analysis – copyright as “engine” of free expression
- Scrutinizable public balancing



“Free” beer?



- Lower costs reduce barriers to accessing the marketplace.
- Lower costs of distribution make innovative delivery models possible.



Other approaches



- **Government-free** - absence of government restraint
- **Control-free** – freedom from control regardless of source

L'Heureux-Dube J. in *Haig*



“a situation might arise in which, **in order to make a fundamental freedom meaningful, a posture of restraint would not be enough, and positive governmental action might be required.** This might, for example, take the form of legislative intervention aimed at preventing certain conditions which muzzle expression, or ensuring public access to certain kinds of information.”

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