

Legal issues in software engineering

23.4.2013 - Ville Oksanen

Who's speaking

- Researcher at Helsinki University of Technology & Helsinki University
- SoberIT - Technology Law
 - Lawyer by training (Master Thesis on Law & Economics)
 - Ph.D, Technology Law
- Partner, Turre Legal
- Vice Chairman, EFFI

Content

- General trends in IPRs
- Software & IPRs
 - Cloud
 - Privacy
 - Design Right
- Case: Sony Rootkit

Trend: Dissatisfaction



PIRAATTIPUOLUE

Etusivu Blogi IRC Keskustelupalsta Verkkokauppa Wiki Piraattinuoret Uutislinkit Lakivahti

Suomeksi | På svenska | In English

etsi

Päävallikko

- Etusivu
- Ajankohtaista
- Kulttuuri
- Kansalaisoikeudet
- Kehitys
- Puolue
- Toiminta
- Lehdistö
- Liity
- Yhteystiedot
- Kirjautuminen / Tunnusen luonti

Tapahtumakalenteri

1.11.2009, klo: 15:00 - 17:00
Tapaaminen Helsingissä

2.11.2009, klo: 18:30 - 20:00
Piraattinuorten hallituksen IRC-kokous

4.11.2009, klo: - 8.11.2009, klo:
Piraattinuoret Ruotsissa tapaamassa Ung Pirat

HYY-vaalit 3.-4.11.

Äänestä piraatti edustajistoon!

Piraattipuolue on kansalaisoikeuksien turvaamiseen ja kulttuurin ja tiedon vapauden lisäämiseen keskittyvä puolue, osana suurta piraattiliikettä, jonka johdosta piraattipuolueita on jo yli **kolmessa kymmenessä maassa**.

Piraattipuolue haluaa edistää myönteistä tietoyhteiskuntakehitystä. Tekijänoikeudet **elvät saa rajoittaa teosten epäkaupallista käyttöä**. Yhteiskunnalle vahingollisista **lääke-** ja ohjelmistopatenteista on luovuttava ja patenttijärjestelmää tarkasteltava kokonaisuutena uudelleen. Tekijänoikeuksia tai ulkoisia uhkia ei saa käyttää perusteena vapauksien ja yksityisyyden kohtuuttomalle rajoittamiselle. Valtioiden ja Euroopan unionin on toimittava nykyistä avoimemmin ja kansanvaltaisemmin.

Vallalla olevat poliittiset virtaukset ovat päinvastaisia. Tekijänoikeuksia kiristetään polkemalla ihmisten yksityisyyden suojaan, pidentämällä jo ennestään järjettömiä suoja-aikoja ja loukkaamalla kuluttajansuoja kopioestoiilla. Patentit luovat usein työpaikkoja lähiinä asianajotoimistoihin. Internetin vapaudesta pelästyneet pyrkivät rajoittamaan vapaata keskustelua vaatimalla sivustojen ylläpitäjät vastuuseen. Valtiot keräävät kansalaisista yhä enemmän tietoa, mutta toimivat samaan aikaan itse usein suljettujen ovien takana.

Epäkaupallista kopointia ja muuta harmitonta kulttuurin edistämistoimintaa ei voida käytännössä rajoittaa puututtamatta sähköisen viestinnän luottamuksellisuuteen. Kohti valvontayhteiskuntaa etenevä kehitys on katkaistava Suomessa ja Euroopassa.

Kuulostaakö tämä vielä hämärältä? Sivustoltamme löytyy puolueohjelmamme **vilteen kohtaan tilvistettyynä** sekä myös **kokonaisuudessaan**. Tutustu myös eri

Ajankohtaista

- Piraattipuolue kritisoi Kaljakellunnasta keskustelemisesta nostettuja sytteitä
- Kutsu ylimääräiseen puoluekokoukseen
- Sisäministeriön holhoavat peliautomaattisuunnitelmat huolestuttavia

Blogikirjoitukset

- **Tekijänoikeus ja omistusoikeus elvät ole rinnastettavia**
- Piraattipuolue kritisoi Kaljakellunnasta keskustelemisesta nostettuja sytteitä
- **Keski-Suomen piiriyhdistys perusteilla**

Viime keskustelut

- **Alhe:** Sääntomuutosehdotukset -

Onko nettivapaus uhattuna? Mistä ACTA-sopimuksessa on kyse?

Avoin keskustelutilaisuus
pe 9.3. klo 16–17.30
eduskunnan Kansalaisinfossa
(Arkadiankatu 3)

Mukana:

- **Liisa Jaakonsaari**,
Euroopan parlamentin jäsen
- **Mikael Jungner**,
kansanedustaja, SDP:n puoluesihteeri
- **Lauri Rechardt**,
Musiikkituottajat IFPI Finland ry
- **Jari-Pekka Kaleva**,
Euroopan pelinkehittäjät EGDF
- **Pasi Palmulehto**,
Piraattipuolue

KAHVITARJOILU.
TERVETULOA!



Euroopan parlamentin
Sosialistien & Demokraattien
ryhmä

www.liisajaakonsaari.fi



Sosialidemokraattinen
eduskuntaryhmä



Parliament receives petition against ACTA

PETI Petitions / External/International trade – 28-02-2012 - 13:03

A petition calling on MEPs "to stand for a free and open Internet and reject the ratification of the Anti-Counterfeiting Trade Agreement (ACTA)" was received by the European Parliament on Tuesday. The petition had been signed by almost 2.5 million people from all over the world.

"Receiving a petition supported by more than 2 million people places an even bigger responsibility on us to listen to the European people and offer them a place to express their views to the European institutions", said Petitions Committee chair Erminia Mazzoni (EPP, IT), after the petition was presented.

The European Parliament has only just begun to consider the proposed ACTA deal. It will need to examine it carefully, taking all concerns into account, making a reasoned assessment of the facts and weighing Internet freedom on the one hand and the fight against counterfeiting on the other. The Petitions Committee will decide in the coming weeks how the petition is to be followed up.

The petition was presented by Alex Wilks, Pascal Vollenweider and Anne Agius, on behalf of Avaaz, an organisation which uses the Internet to campaign on various issues. It calls on the European Parliament "to stand for a free and open Internet and reject the ratification of the Anti-Counterfeiting Trade Agreement (ACTA), which would destroy it".

The Petitions Committee will decide on the petition's admissibility at its next meeting, on 19-20 March. If the petition is declared admissible (i.e. if it falls within the EU's sphere of competence), the committee will then hold an open discussion with the petitioners, experts, the European Commission and other stakeholders. This would contribute to the public debate officially launched in the European Parliament this week (see below for list of ACTA events in the coming days).

A search bar with a blue outline. A microphone icon is located at the far right end of the bar.

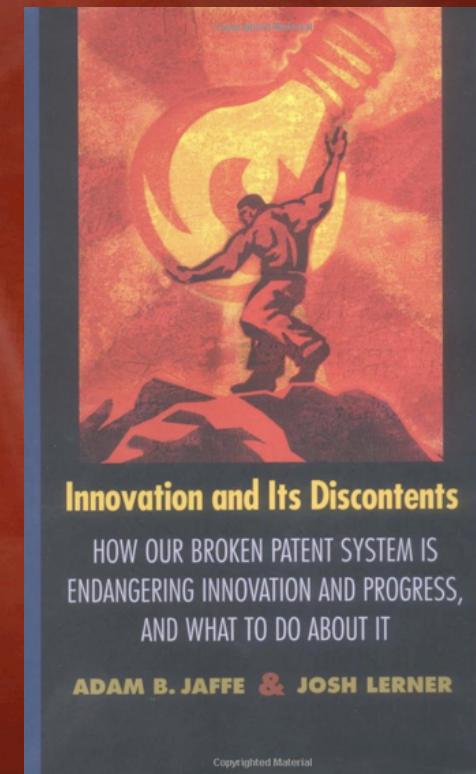
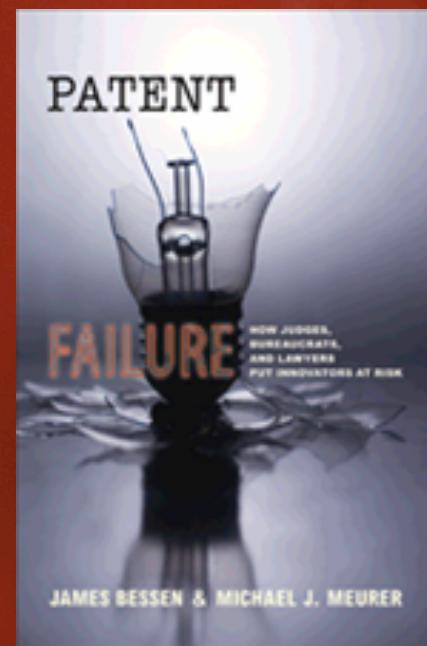
Google Search

I'm Feeling Lucky



Tell Congress: Please don't censor the web!

Trend: Academic critique against ineffectiveness



IPRs

- Unitary regime for patenting
 - Main problem: language translations
 - Italia aims to stay outside
 - More bi / multilater trade agreements?



Nokia & Ericsson

...Unfortunately the current package of proposals for EU Patent Reform does not achieve this important objective. On the contrary the proposed Regulation now before the European Parliament is seriously flawed.

We are concerned that, if passed, it will harm innovation, competition and enterprise in Europe for years and decades to come. It will put Europe at a serious disadvantage compared with other nations and trading blocs, both established and developing, around the world. In short it creates a non-level playing field for European companies doing business in Europe....



Meanwhile in China

China registered 526,412 patent applications in 2011, the highest for any nation, taking the world total to more than 2 million, a U.N. report said.

The World Intellectual Property Organization, a U.N. intellectual property agency headquartered in Geneva, said the United States came in second with 503,582 applications, and Japan third with 342,610 applications last year.. With its record registration, the report said China's State Intellectual Property Office has become the world's largest patent office, surpassing the United States Patent and Trademark Office and the Japan Patent Office.



“The stars are almost aligned,” says Greg Slater, director of global trade policy at Intel, the chipmaker. The US and EU “have the opportunity to try to set the gold standard” in areas such as intellectual property protection, he says, which emerging markets like China and India would then have to



Finnish trend

- Administrators are liable for everything
 - Finreactor: moderating discussions makes you liable for all infringements
 - DC++: Rightholders demand millions of Euros from hub-owners
 - Kaljakellunta.com: Prosecutor - Running a discussion board is equal to arranging an event IRL.



Cloud



SAAS / CLOUD

“in-house, third-party, and outsourced applications all operating in a uniform environment, with on-demand provisioning of both in-house and outsourced hardware resources and also, of course, high degrees of security, monitoring, auditing, and management.” (Foster and Tuecke 2006)

..IN OTHER WORDS

- There are no predefined services providers but instead the user selects dynamically the service provider, which matches best to the profile user has defined
- The roles of service user and provider are dynamic i.e. anyone can let others to use their free resources.
- The services are offered globally i.e. the user does not (necessary) know where the service provider is physically located.
- The service itself may be a product of several services, which are dynamically linked together

IPRs and Services

- IPRs don't generally speaking protect services as such
- However, certain aspects of services can be protected:
 - Brand: trademark, design rights (utility patents)
 - Tools & processes: patents, copyright (in case of software), trade secrets

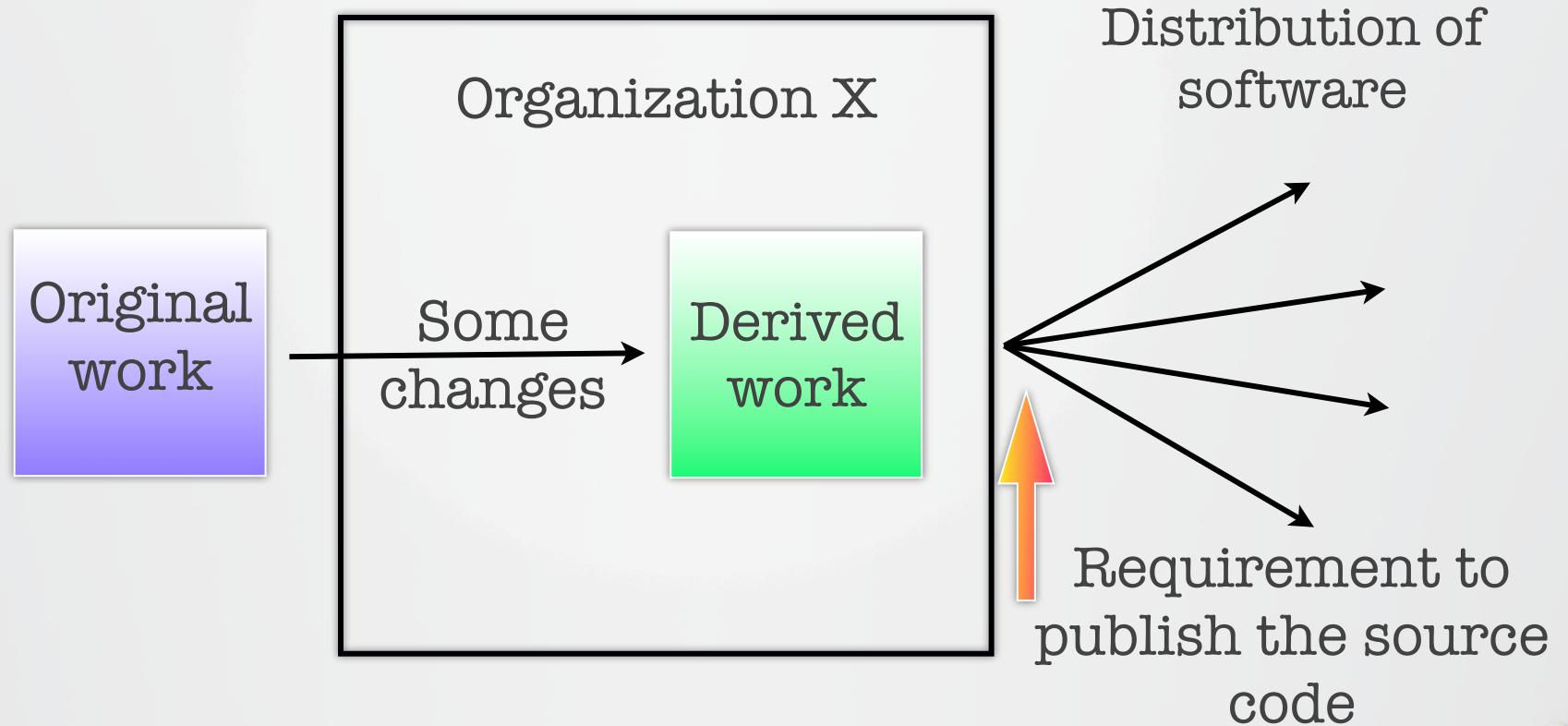
In case of software

- Using software to offer services not relevant as such from the copyright perspective
 - Not “making a copy” or “making available”
- However, it is still possible to have specific provisions how the software can be used in the software licenses
 - For example, the number of users may be limited or the users have to be employees etc.

OSS and Cloud

- None of the widely used OSS-licenses contains special ASP/SaaS/Cloud-related clauses
- Since software is not distributed, even strong copyleft licenses do not require publication of the changes
- Some developers (and Richard Stallman) consider this as “ASP/SaaS-loophole”

Strong copyleft..?



Earlier Exceptions

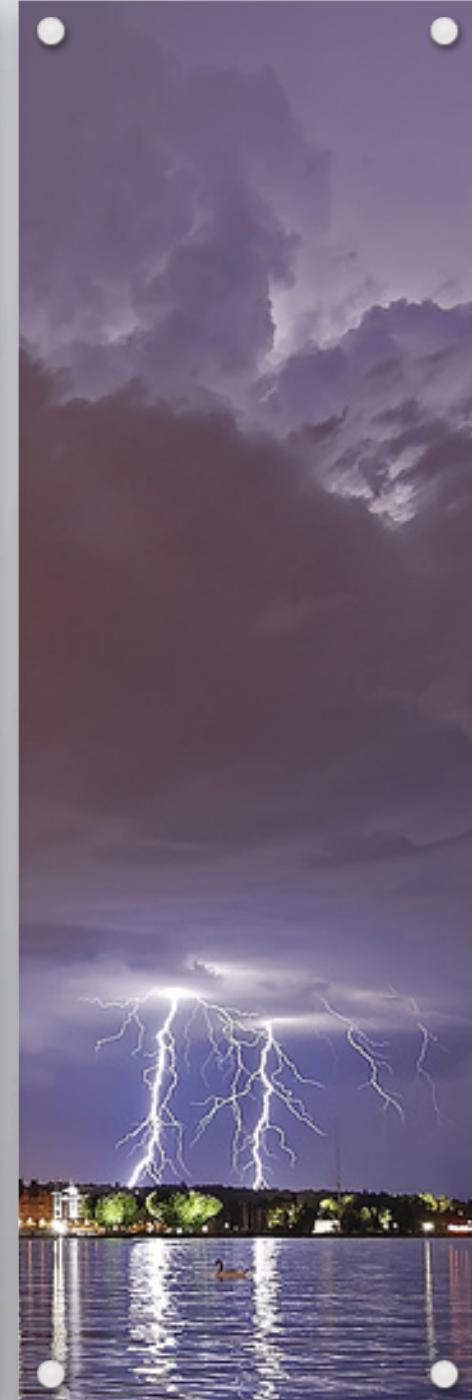
- Afferro General Public License
 - Modified version of GPL v.2
 - Official support of Free Software Foundation
- Honest Public License
 - Modified versions of GPL v.2
 - by Fabrizio Capobianco
 - http://www.funambol.com/blog/capo/files/HPL_draft.txt

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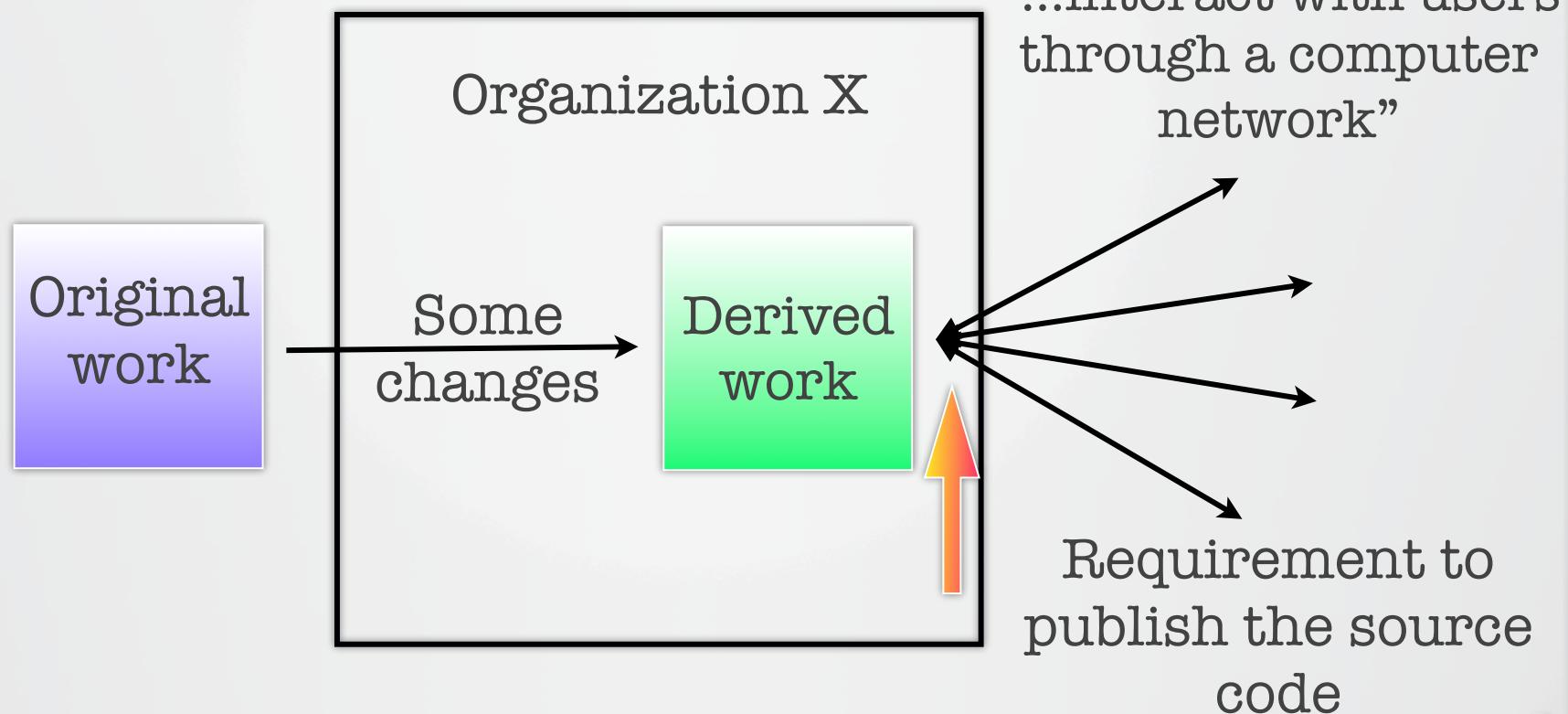


- Free Software Foundation:

“The GNU AGPL needs to cover all the various protocols and means for network interaction in order to fully achieve its purpose. For example, some developers who work on games that use a client-server architecture have expressed interest in a license that makes sure that both the server and client remain free and available to all players; AGPLv3 would provide that for them. A strong interpretation is also more forward-looking.”



..meaning that:





Privacy regulation update

ORIGINAL GOAL

- To update the existing regulation to meet the change in technologies
- To give more rights to both citizens and also data protection authorities

HOWEVER..

- “Regulatory capture” in action
- Heavy lobbying from e.g.
 - U.S Government
 - Facebook, Google etc.
- To water down the proposal

KEY FEATURES

- “Clarified definitions of “personal information” and “consent”.
- Data protection by Design
- Accountability + Notification of breaches
- Portability + right to access (for free)
- Right to be forgotten
- International regulatory scope
 - Applies always if EU citizens are being targetted

PERSONAL INFORMATION

- A person must be considered identifiable when either the data controller or another natural or legal person can identify the person.

CONSENT

Data subject's perceived behaviour

or

Result of an active choice

DATA PROTECTION BY

Article 23:

“The controller shall, both at the time of the determination of the means for processing and at the time of the processing itself, implement appropriate technical and organisational measures and procedures in such a way that the processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject.”

RIGHT TO BE FORGOTTEN

- Most controversial feature
- Many open questions
 - Practical (backups? Who pays the costs)
 - Content specific (photographs? Discussions?)

ACCOUNTABILITY

Article 22

“The controller shall adopt policies and implement appropriate measures to ensure and be able to demonstrate that the processing of personal data is performed in compliance with this Regulation.

The controller shall implement mechanisms to ensure the verification of the effectiveness of the measures referred to in paragraphs 1 and 2. If proportionate, this verification shall be carried out by independent internal or external auditors.”

NOTIFICATIONS

- Article 31:

“In the case of a personal data breach, the controller shall without undue delay and, where feasible, not later than 24 hours after having become aware of it, notify the personal data breach to the supervisory authority. The notification to the supervisory authority shall be accompanied by a reasoned justification in cases where it is not made within 24 hours.”
- Article 32:

“When the personal data breach is likely to adversely affect the protection of the personal data or privacy of the data subject, the controller shall, after the notification referred to in Article 31, communicate the personal data breach to the data subject without undue delay.”

PORTABILITY

Data portability

Article 18

“The data subject shall have the right, where personal data are processed by electronic means and in a structured and commonly used format, to obtain from the controller a copy of data undergoing processing in an electronic and structured format which is commonly used and allows for further use by the data subject.”

INTERNATIONAL SCOPE

- A change from a general prohibition of transferring data to third countries (notwithstanding derogations) as contained in the Directive to the principle that transfers can only take place if enumerated conditions are met
- Fines - %

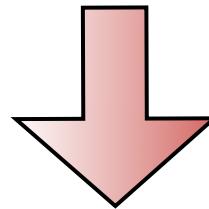
NO RESEARCH

Amendment 339

Proposal for a regulation
Article 83 – paragraph 2 - point b)

Text proposed by the Commission

(b) the publication of personal data is necessary to present research findings or to facilitate research insofar as the interests or the fundamental rights or freedoms of the data subject do not override these interests; or



Amendment

deleted

Or. en

Justification Research purposes should not override the interest of the data subject in not having his or her personal data published See related Article 17(2).

A HIP

ASIAKIRJOJEN HENKILOINFORMAATIOPUTSARI

Koti

Tuote

Tietoa

Kontaktit

HIP

Suomessa erilaiset julkishallinnon elimet tuottavat paljon asiakirjoja ja tietoa, joista voisi olla hyötyä yksityiselläkin sektorilla. Tähän liittyvä ongelma on dokumenttien sisältämät henkilökohtaiset tiedot (sosiaaliturvatunnukset jne.), joita suojaa tietosuojalaki. Dokumenttien puhdistaminen yksityisyystiedoista käsin vie aikaa ja rahaa. Ongelmaa helpottamaan tarvitaan tekninen ratkaisu. Tässä kohtaa me ja HenkilöInfoPutsari (HIP) astumme kuvaan.

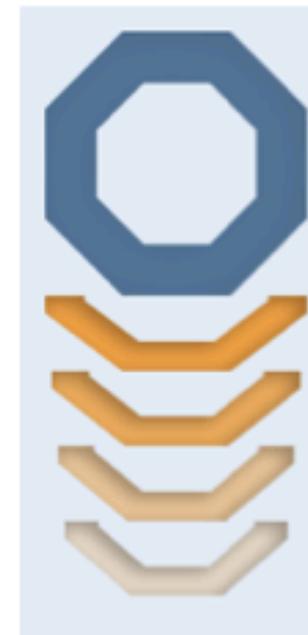
Tällä hetkellä (21.1.2011) projektimme etenee neljästä kehityssprintistään kolmannessa. Parantelemme käyttöliittymää ja korjaamme bugeja. Etsimme projektiimme:

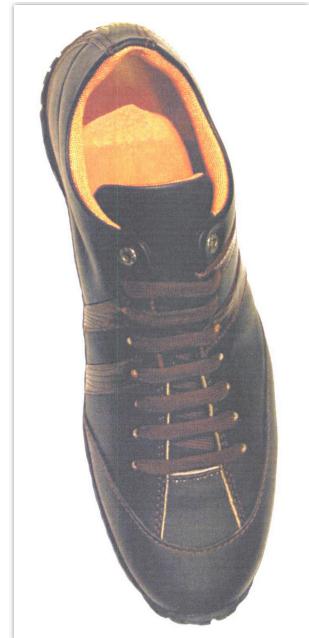
Jatkokehittäjiä

Yksittäisiä avoimen lähdekoodin sovelluksista kiinnostuneita henkilöitä, joilla on halua ja aikaa panostaa tähän ohjelmaan tai kokonaisia ohjelman jatkokehityksestä kiinnostuneita organisaatioita.

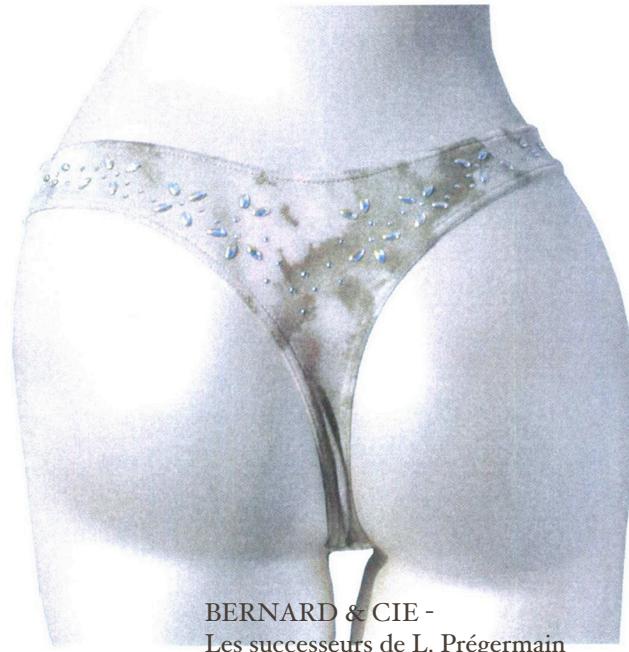
Asiakkaita

Esimerkiksi kunnat tai virastot jotka ovat kiinnostuneita pilotoimaan ohjelmaa vuoden 2011 alussa.





Design Right & Software



BERNARD & CIE -
Les successeurs de L. Prégermain



BURBERRY LIMITED



BERNARD & CIE -
Les successeurs de L. Prégermain

DESIGN RIGHT - REQUIREMENTS

- Requirements: New and unique
 - No “prior art”
 - Exception: One year grace period to test in the markets
- Uniqueness means that the design has to be different than the existing designs
- Protection for lines, contours, colours, shape, texture, materials and/or its ornamentation
- From PRH or more typically, from OHIM

HOW EXPENSIVE?

“The fees for registering and publishing one design are €350 for five years’ protection. The system is “fee-decreasing” which means that in a multiple application, the fees for the second to 10th design will be 50% of the basic fee each and less than 25% of the basic fee for the 11th design onwards.”

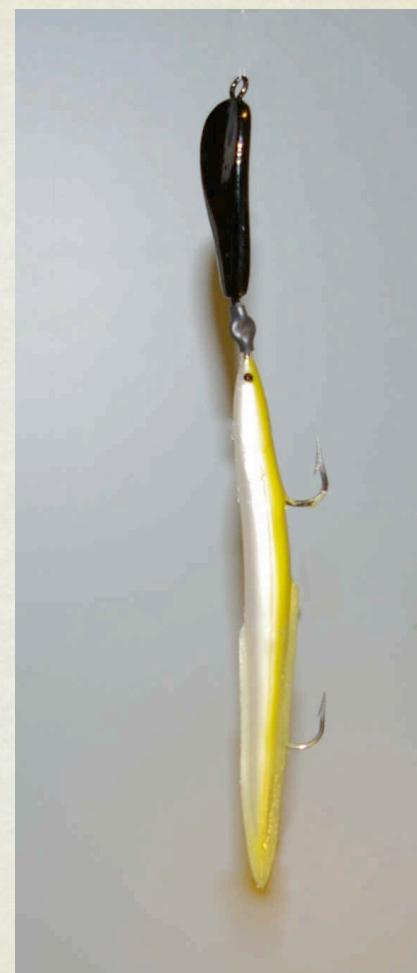
EXAMPLE: JOHN DEERE FORESTRY



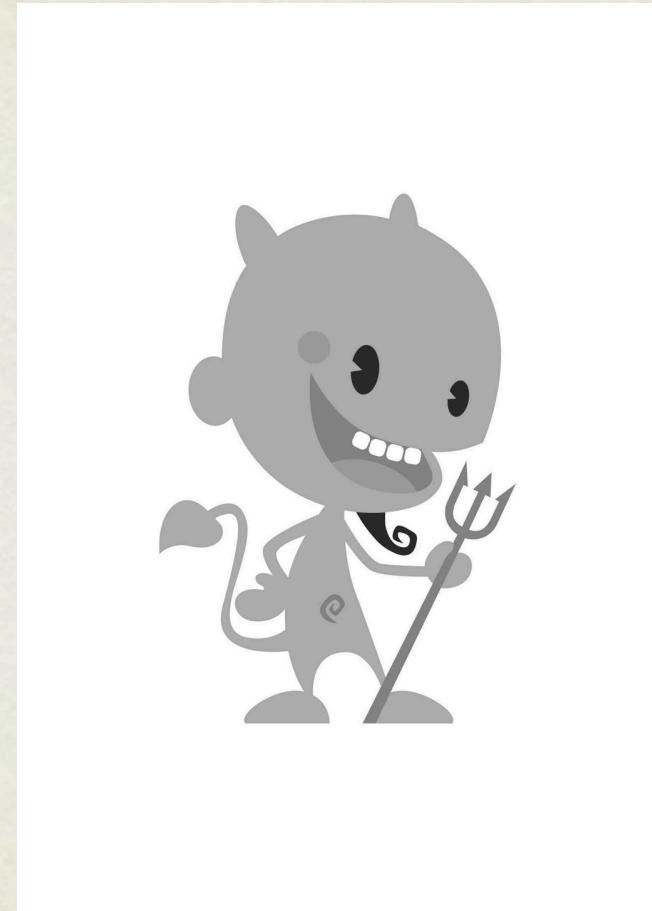
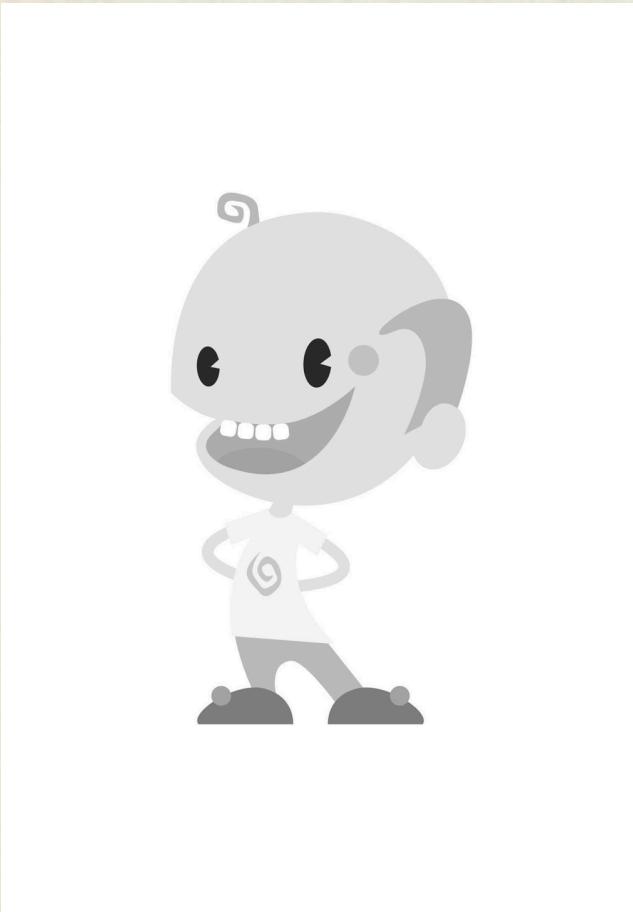
EXAMPLE: VALIO



EXAMPLE: RAPALA

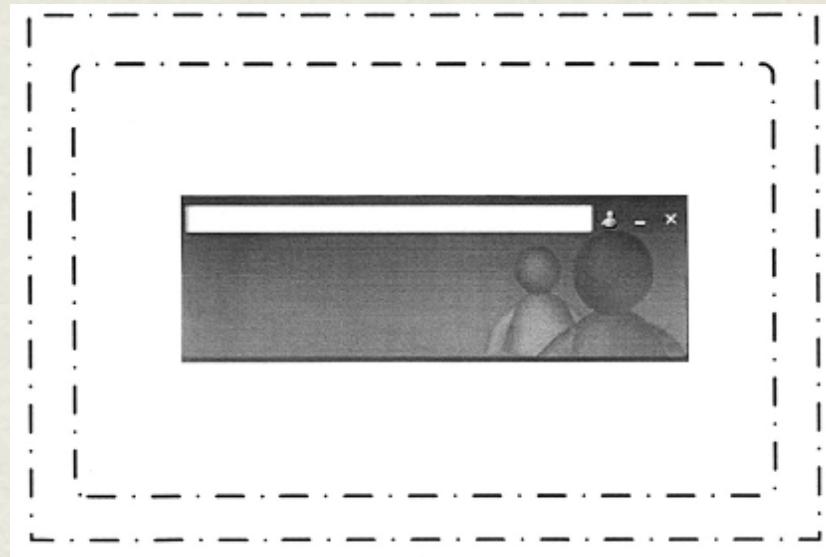


EXAMPLE:
MANNERHEIMIN LASTENSUOJELULIITON
HÄMEEN PIIRIN KOTINEUVOLA OY





Microsoft nro. 000329560-0006



Microsot nro. 000217054-0009



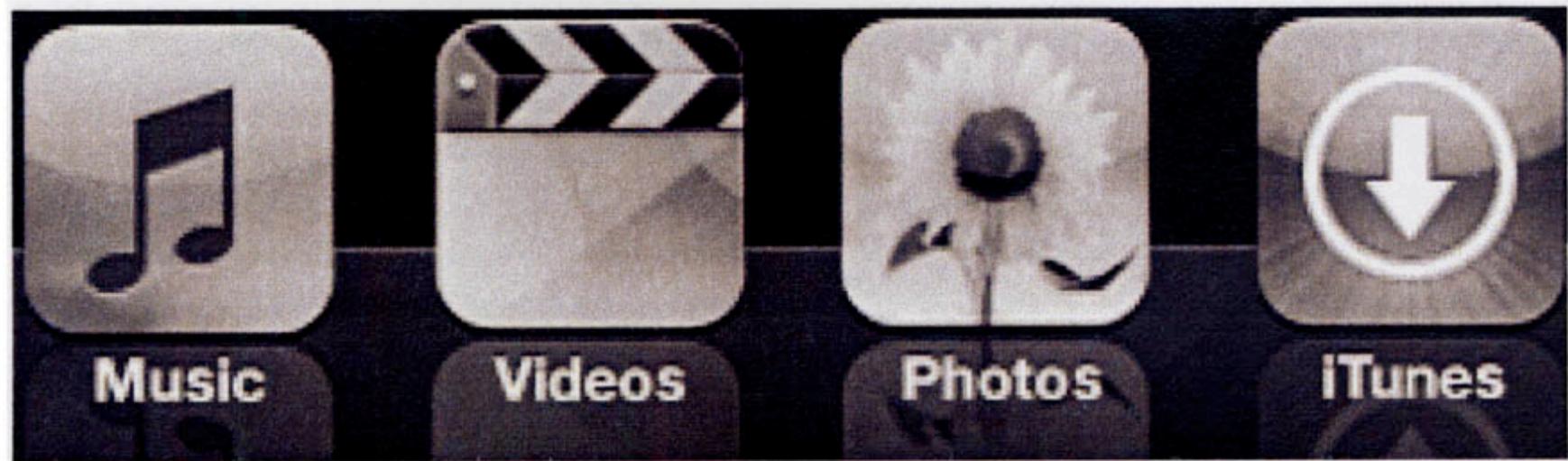
Nokia Corporation

Graphical user interfaces 14.04



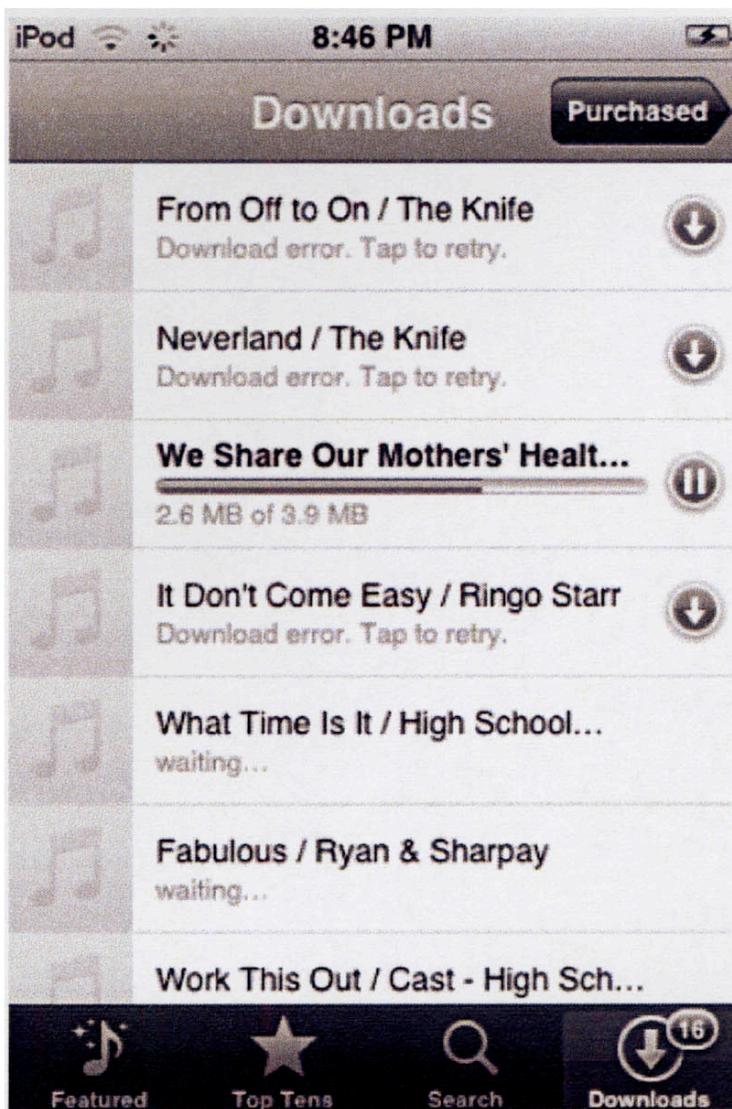
Nokia Corporation

Graphical user interfaces 14.04



Apple Inc.

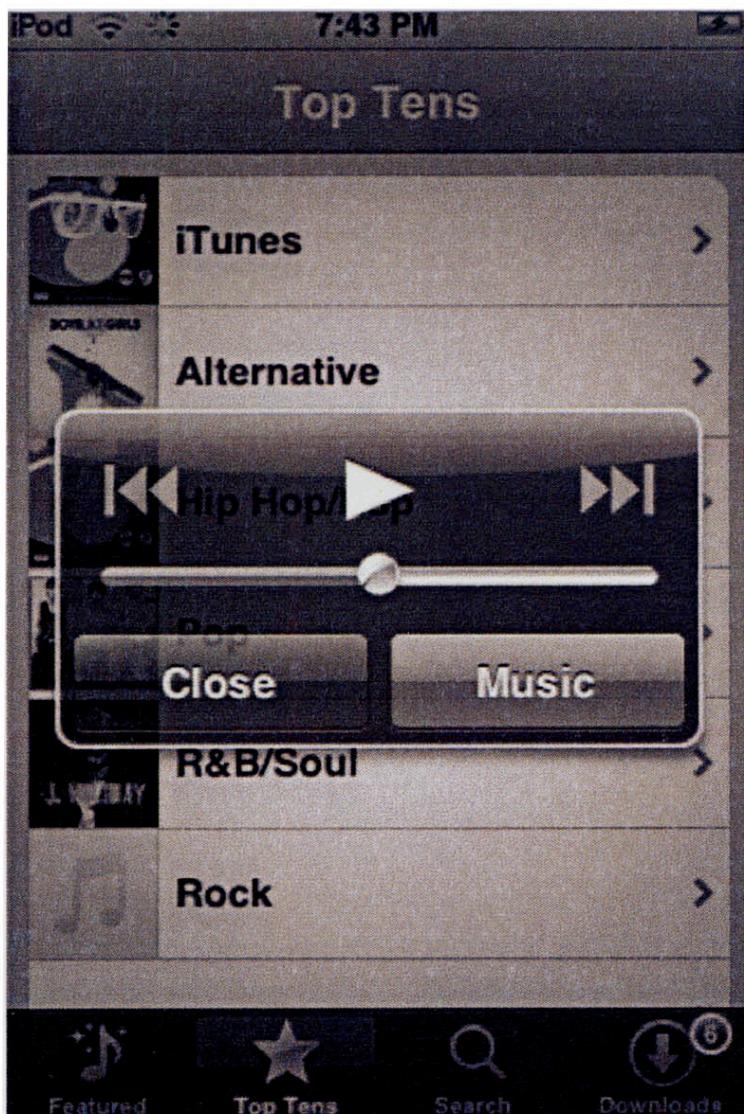
Graphical user interfaces



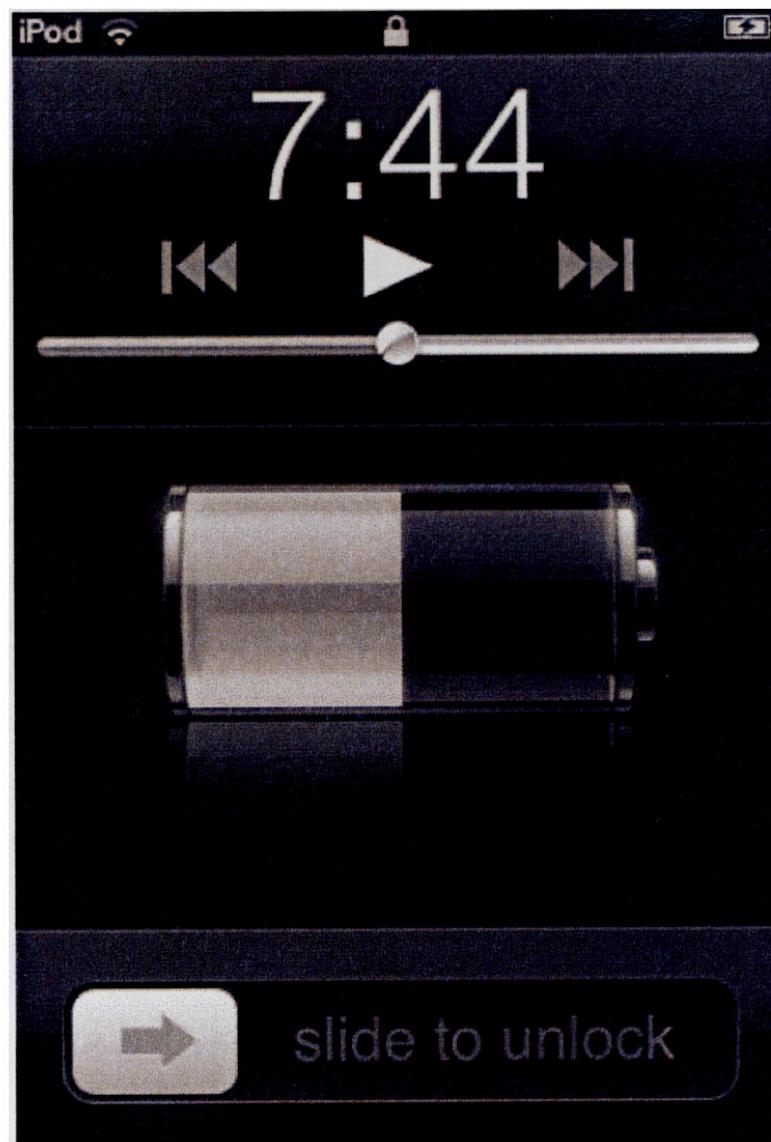
Apple Inc.



Graphical user interfaces



Apple Inc.

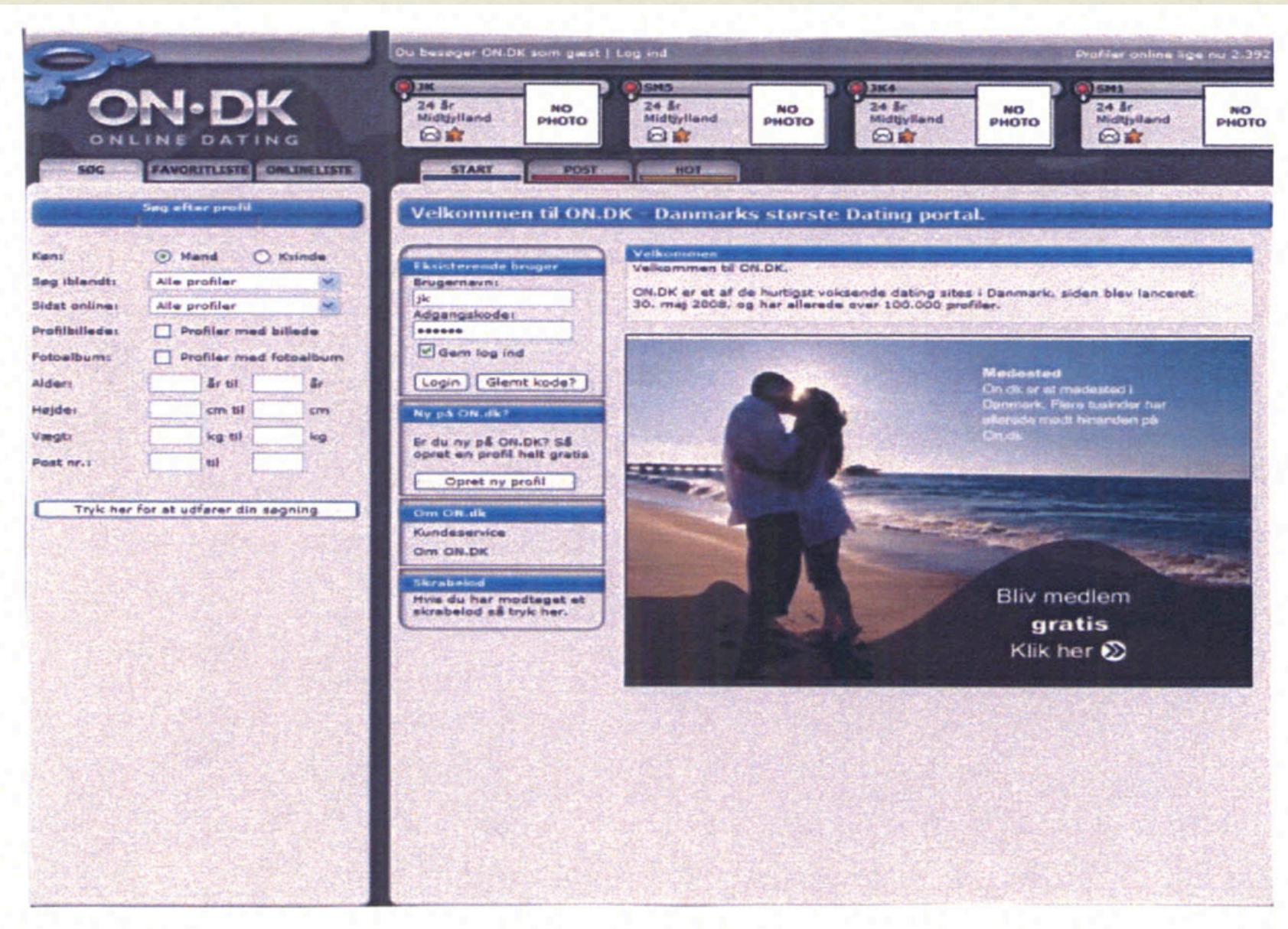


Graphical user interfaces



Apple Inc.

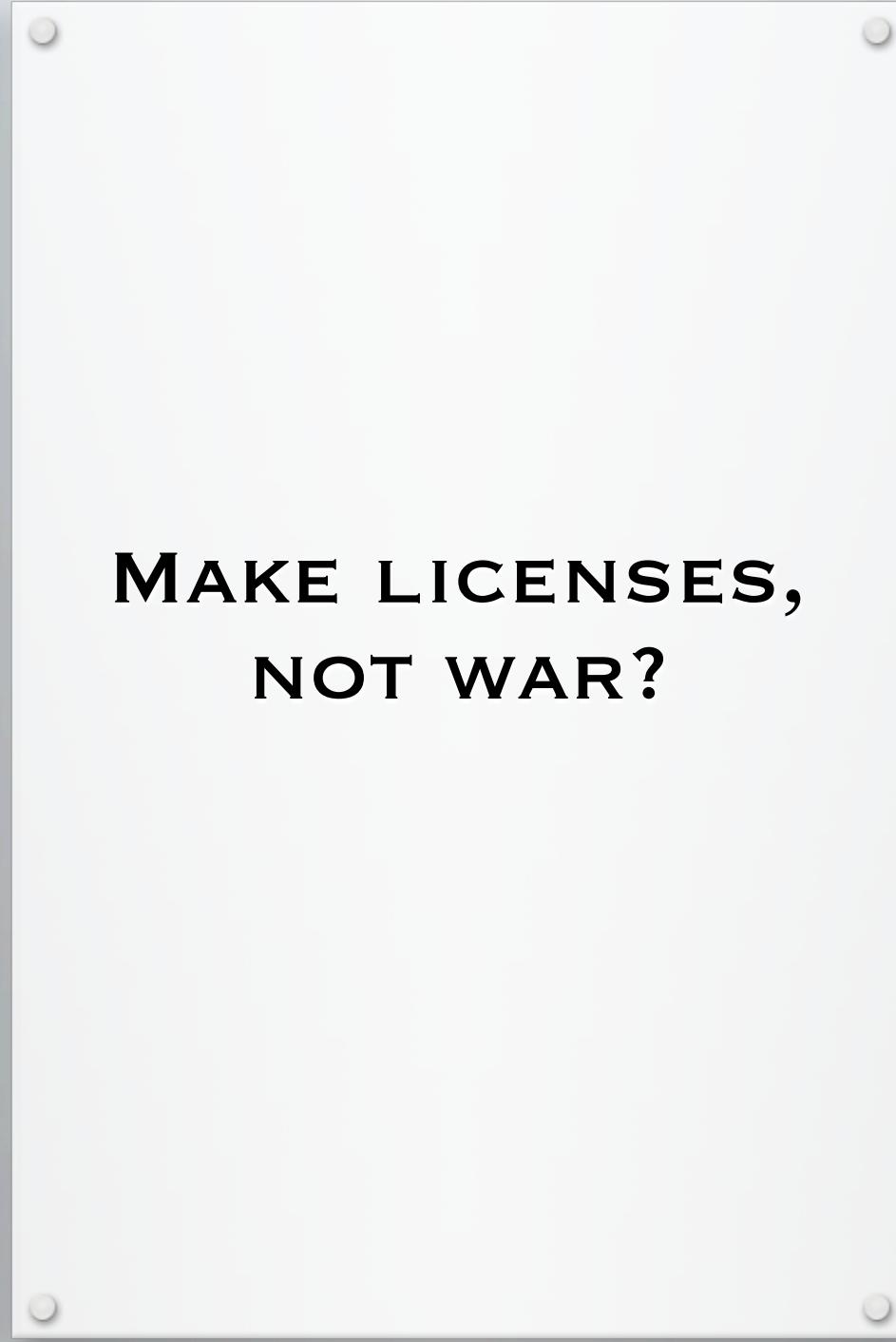
Graphical user interfaces



Aladdins ApS

Graphical user interfaces

Företag	Mönster-skydd, OHIM	Mönster-skydd, OHIM, kl. 14	Mönster-skydd, OHIM, kl. 14.04	Patent, EPO	Patent, USPTO (utility patent)	Design- patent, USPTO
Apple Inc.	1474	1345	797	1263	3492	771
Samsung Electronics	3062	2471	136	16912	35486	2959
Microsoft Corporation	1738	1536	974	4891	17292	1605
Google Inc.	9	9	7	485	875	24
Motorola Mobility, Inc	366	359	2	1159	277	69
Hewlett-Packard Company	80	66	0	8508	22753	751
Nokia Corporation	966	875	27	11987	4746	992
HTC Corporation	85	81	36	375	93	68
Deutsche Telekom AG	527	463	327	1037	220	14
Sony Ericsson Mobile Communications	353	347	40	1746	834	139
Sony Corporation	1457	1056	185	15196	28856	3022
YOOX SpA	300	300	300	0	0	0
Amazon Technologies, Inc.	42	25	18	107	358	25



**MAKE LICENSES,
NOT WAR?**



Sony Rootkit case



Sony Rootkit - Background

- * Sony BMG wanted to put more effective “copy protection” to its CDs
 - * New software included so-called rootkit-technology
- * Security researcher Mark Russinovich was first to publish the case. He found that “copy protection”:
 - * Created a security hole, which third-party malware could use
 - * Consumed computer resources even while no listening took place
 - * No consent, no easy way to uninstall

Sony's initial position

"Most people, I think, don't even know what a rootkit is, so why should they care about it?"

The President of Sony BMG's global digital business division Thomas Hesse

News escalation

Original blog-post

BoingBoing

Social media

N+1 Other blogs

Social media
aggregators

Mainstream news

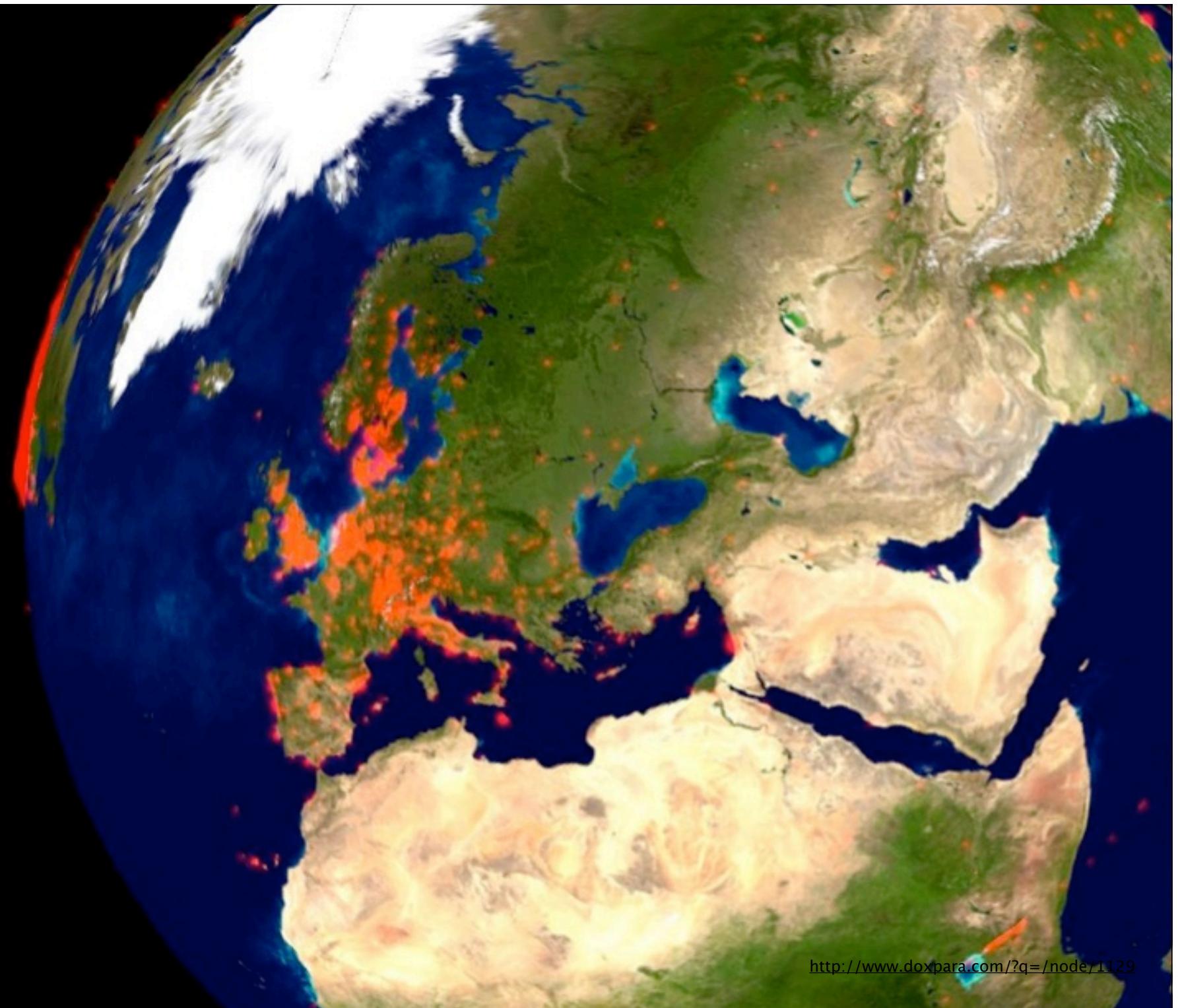
Actions in USA

- * 7 Class Action Suits
- * 3 Investigations by Attorney Generals
- * Investigation by FTC

Non-action in EU

- * The protected CD were never “officially” sold inside EU
- * Consumer NGO’s demanded action
- * There was some discussions -> no official actions taken





<http://www.doxpara.com/?q=/node/1129>

Outcome

- * In United States Sony BMG settled:
 - * Compensation to consumers
 - * Payments to States
 - * Tight restrictions how “copy protections” could be used in the future
- * Soon afterwards Sony BGM gave up using “copy protection in CDs

Aftergame

Sony BMG Music Entertainment is suing a company that developed antipiracy software for CDs... Sony BMG is seeking to recover some \$12 million in damages from the Phoenix-based technology company..accuses Amergece of negligence, unfair business practices and breaching the terms of its license agreement by delivering software that "did not perform as warranted."