Well-Functioning P2P Software Product Markets

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Related Work

- A. Chin, *Antitrust Analysis in Software Product Markets*, 18 HARV. J.L. & TECH. 1 (2004)
- A. Chin, *Decoding Microsoft*, 39 WAKE FOREST L. REV. __ (2005)

Sketch by Art Lien / CNBC

What is a software product?

A software product consists of "code and nothing else."

— Microsoft

Would Microsoft have taken the same litigation position in a copyright infringement suit?

What is a software product?

- **Legal rights** (and/or immunities) derived from the vendor's copyright in the accompanying software
  - Limited to contemplated end uses
- **Technological capabilities** (i.e., services) supported by the accompanying software
  - Ability to install and run
  - For contemplated end uses
  - According to the accompanying documentation

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Use Case

End Use: Get cash from ATM

User Action	System Response
insert card	
	read magnetic stripe
	request PIN
enter PIN	
	verify PIN
	display menu
press key	
…	

Essential Use Case

End Use: Get cash from ATM

User Intention	System Responsibility
identify self	
	verify identity offer choices
choose	
	dispense cash
take cash	

Well-Functioning Software Product Markets

- **Every software developer is free to choose the code that is to be executed when a user chooses its software product for a particular essential end use.**

- **Design choices are made by the software developer, not by courts or monopolists.**
  - **No: Napster/Grokster distinction, IE overriding default browser**

Price Discrimination Markets

A relevant product market can be defined around a captive end use segment

- Cellophane? Probably not. Arbitrage defeats price discrimination

- Software? Possibly. DRM can prevent arbitrage

Quality-Adjusted Price Discrimination Markets

An end use segment is captive if a hypothetical monopolist could discriminate against it by reducing quality with respect to that end use alone.

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P2P File Sharing

Two end uses
- **Download file**
- **Upload file**

Neither can be captive

∴ **One market**

Antitrust concerns
- **Overriding of user choice**
- **Judicial software design**