Reverse engineering, anti-circumvention, and other broken laws

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Reverse engineering exceptions

If a game developer doesn't address issues, ought we refrain from fixing them ourselves?

Blizzard v bnetd

GPL-licensed reverse engineered emulator for Blizzard's Battle.net games

Blizzard v bnetd

- Developers had waived their fair use rights by accepting the shrinkwrap EULA
  - therefore reverse-engineering was not permissible and resulted in copyright infringement
- Court also held that bnetd was an illegal circumvention device because it did not reproduce CD-key verification checks

WOW GLIDER AUTOMATES THE BORING BITS

MODIFIES WOW MEMORY DIRECTLY WITHOUT COPYING WOW FILES THEMSELVES

MDY v Blizzard

- Blizzard won summary judgment on copyright issues
  - Glider copies and modifies Blizzard data in RAM
  - Unauthorised copying is explicitly prohibited in the EULA
  - Glider is therefore liable for the infringing acts of its users (secondary liability not contested)

Well, at least it could never happen here...

It couldn't happen here?

- interoperability exception (s 47D):
  - Copyright in a computer program is not infringed if the copying is done "for the purpose of obtaining information necessary to [...] make independently another program [...] to connect to and be used together with, or otherwise to interoperate with, the original program or any other program"

It couldn't happen here?

- s 47H: "An agreement, or a provision of an agreement, that excludes or limits, or has the effect of excluding or limiting, the operation of subsection 47B(3), or section 47C, 47D, 47E or 47F, has no effect."

It couldn’t happen here?

“Copyright in a *computer program* is not infringed [...]”

But computer games are also films...

... and artistic works, musical works, and sound recordings, ...

The reverse engineering exceptions do not apply to games.

If a game developer doesn't address issues, ought we refrain from fixing them ourselves?

Anti-circumvention laws

Stevens v Sony

- High Court of Australia decided that the region coding in the Sony PlayStation was not a Technological Protection Measure (TPM).
- Therefore, PS modchips were not Circumvention Devices

Homebrew apps and games on consoles

- Vibrant development scene - ports and original applications and games
- Only limited open SDKs available

Homebrew generally needs modchips

- The law has changed since *Stevens v Sony*
- ‘material form’ now includes temporary reproduction in RAM
- We can no longer say that a device doesn’t *prevent or inhibit* infringement because it merely disallows playing of an already infringing disk

Exceptions

A key focus on garage door openers

Exceptions to TPMs

- exception for anti-competitive business models (garage door openers)
- A device that controls access to (ACTPM) or prevents, inhibits, or restricts copying of (TPM) a computer program ‘embodied in a machine or device’ is not a TPM to the extent that it
  - “restricts the use of goods [...] or services in relation to the machine or device.” (s 10(1))

Interoperability exceptions

- Liability for actual circumvention (ACTPMs) or for making or distributing a circumvention device (all TPMs) does not apply where the device *will be used* to *do an act that does not infringe copyright in the computer program* and is
  - "done for the sole purpose of achieving interoperability of an independently created computer program with the original program or any other program." (ss 116AN(3), 116AO(3).)

Two big (purposive) requirements:

Will be used for non-infringing purposes

Done for the sole purpose of achieving interoperability

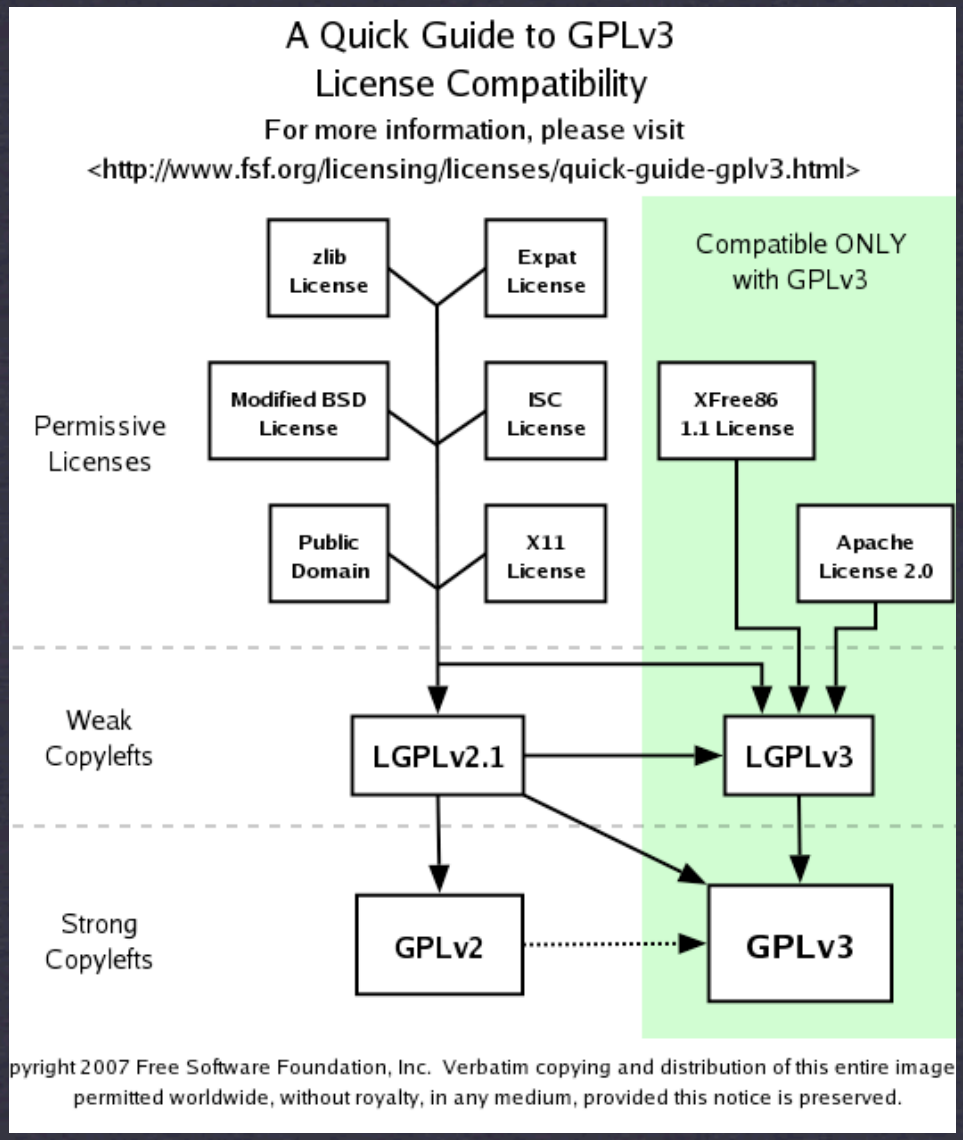
If a manufacturer chooses to sell a console at below cost price, to what extent do we owe them a duty not to hack it into something useful?

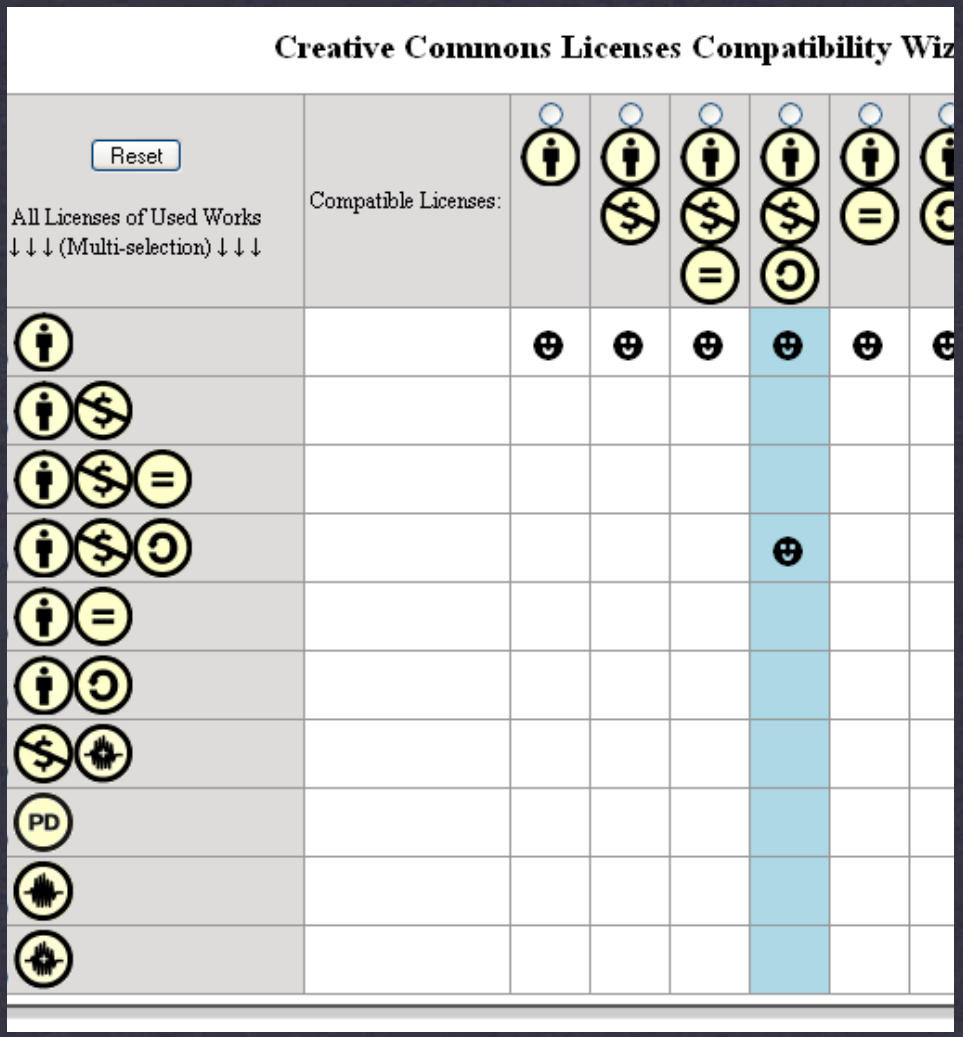
Other issues (quickly...)

R18+

- We still don’t have an R18+ category for games
  - Unlike film, television, and books...
  - Films or computer games featuring content equivalent to the descriptions in the Guidelines for an M classification, or higher, must be classified (a fee applies).
  - Advertising and sale of unclassified games is generally prohibited
    - Non-commercial free software development is generally not restricted

Feedback: Are the classification requirements inhibiting free software development?





LICENCE COMPATIBILITY

Licensing issues

- FSF recently made changes to the GFDL to allow wikipedia and others to move to CC BY-SA
- But rich-media designers still have a lot of trouble combining GPL code with CC BY-SA content.
  - unintentional and technical incompatibilities
  - Typically require separate distribution

Is the requirement of separate distribution of differently licensed content a serious barrier?

Feedback

We want your opinions, case studies, and comments.

We want your help lobbying for change.

Please contact nic@efa.org.au.