Immaterial rights and information technology - a look at topical themes

Hecse Autumn School 29-30 October 2009

Who's speaking

- Researcher at Helsinki University of Technology & Helsinki University & HIIT
 - SoberIT Teaching
 - 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
 - SaaS
 - Design Right
- A group task: Sui Generis-protection for Software

Trend: Dissatisfaction







Etusívu

Blogi

Keskustelupalsta

Verkkokauppa

Wiki

Piraattinuoret

Uutislinkit

Lakivahti



Suomeksi 💳 | På svenska 😌 | In English 😌





etsi

Päävalikko

- Etusivu
- Ajankohtaista
- Kulttuuri
- Kansalaisoikeudet
- Kehitys
- Puolue
- Toiminta
- Lehdistö
- Liity
- Yhteystiedot
- Kirjautuminen / Tunnuksen 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 kolmessakymmenessä maassa.

Piraattipuolue haluaa edistää myönteistä tietoyhteiskuntakehitystä.

Tekijänoikeudet eivät 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 suojaa, pidentämällä jo ennestään järjettömiä suoja-aikoja ja loukkaamalla kuluttajansuojaa kopioestoilla. Patentit luovat usein työpaikkoja lähinnä 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 kopiointia ja muuta harmitonta kulttuurin edistämistoimintaa ei voida käytännössä rajoittaa puuttumatta sähköisen viestinnän luottamuksellisuuteen. Kohti valvontayhteiskuntaa etenevä kehitys on katkaistava Suomessa ja Euroopassa.

Kuulostaako tämä vielä hämärältä? Sivustoltamme löytyy puolueohjelmamme viiteen kohtaan tiivistettynä sekä myös kokonaisuudessaan. Tutustu myös eri

Ajankohtaista

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

Blogikirjoitukset

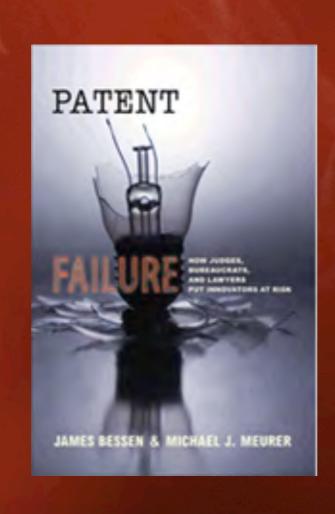
- Tekijänoikeus ja omistusoikeus eivät ole rinnastettavia
- Piraattipuolue kritisoi Kaljakellunnasta keskustelemisesta nostettuja syytteitä
- Keski-Suomen piiriyhdistys perusteilla

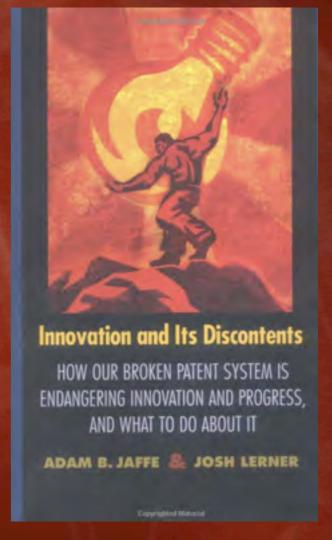
Viime keskustelut

· Alhe: Sääntomuutosehdotukset -

Trend: Academic critique against ineffectiveness







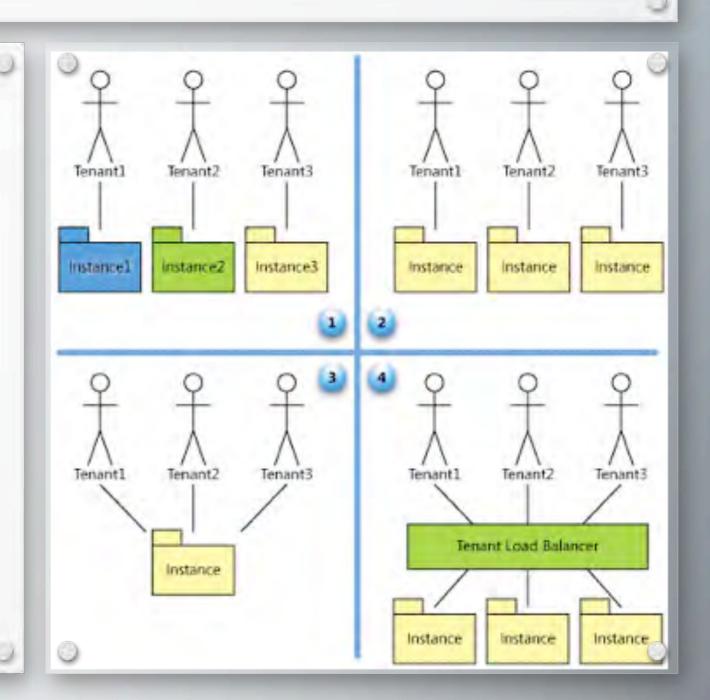
Finnish trend

- 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



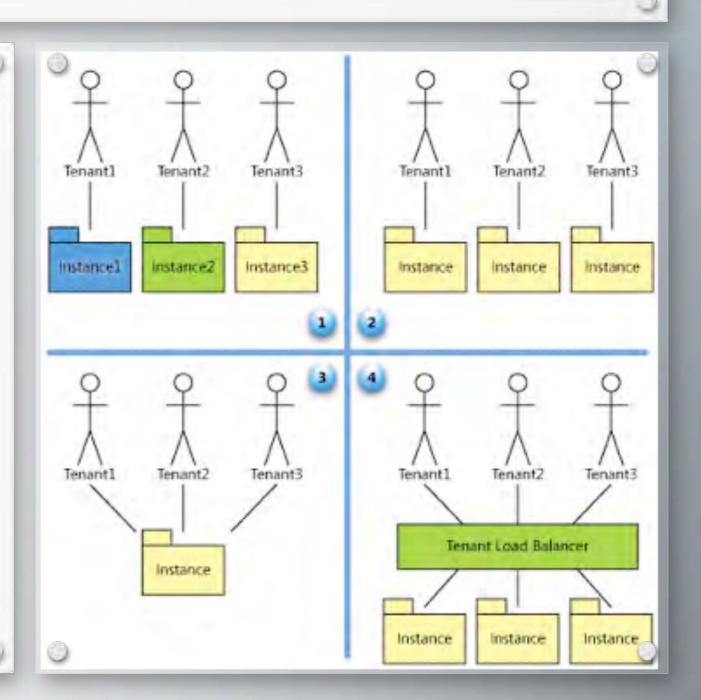
What SaaS is (aside hype)?

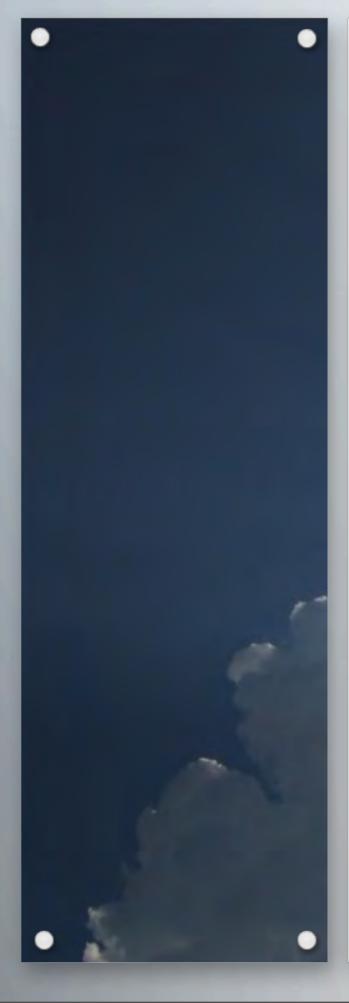
- Chong and Carraro (2006)
- Level I -Ad Hoc/ Custom
 - Basically ASP-model, in which the service provider offers a single, non-customized application to a customer



What SaaS is?

- Level III -Configurable, Multi-Tenant-Efficient
- Like Level II but the application can handle many customers at once without the need for separate instances





What Saas is?

Level IV - Scalable, Configurable, Multi-Tenant-Efficient

"A SaaS system is scalable to an the applications are hosted in "a load-balanced farm of identical instances, with each customer's data kept separate, and with configurable metadata providing a unique user experience and feature set for each customer. A SaaS system is scalable to arbitrarily large number of customers, because the number of servers and instances on the back end can be increased or decreased as necessary to match demand, without requiring additional re-architecting of the application, and changes or fixes can be rolled out to thousands of tenants as easily as a single tenant."





SAAS - NG

"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 there 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

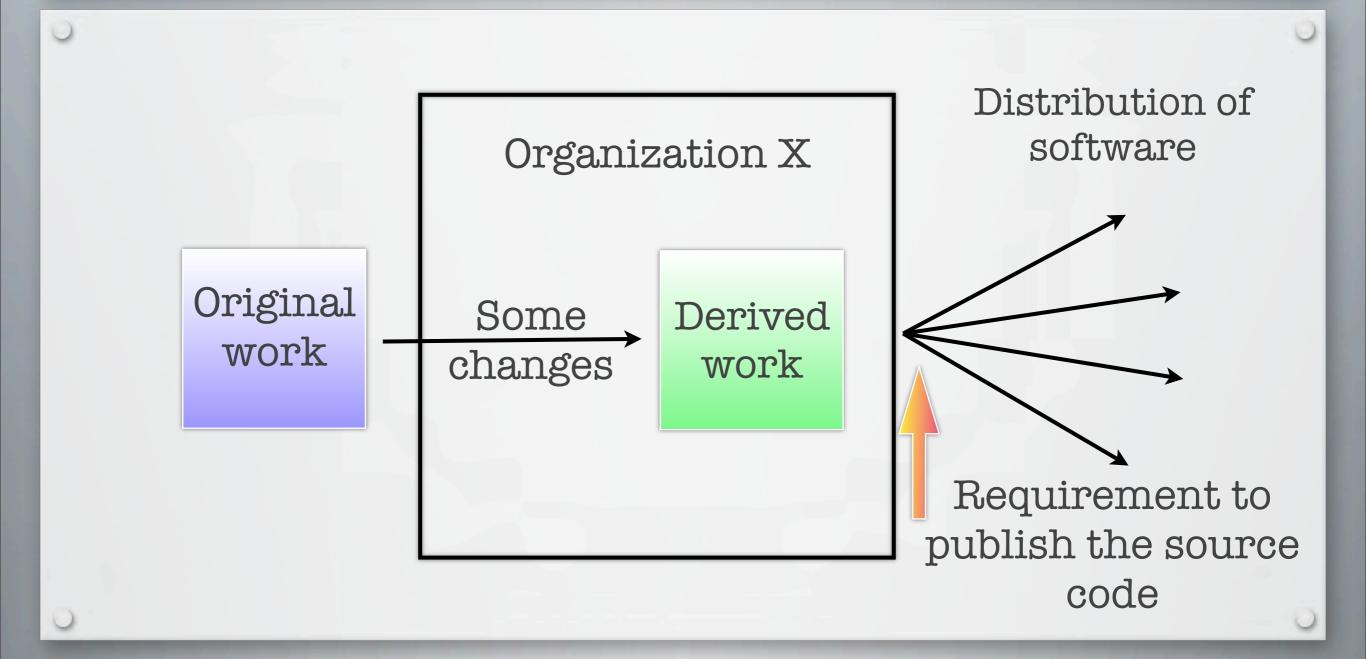
In case of software

- 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 SaaS

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

Strong copyleft..?



Earlier Exceptions

- Affero 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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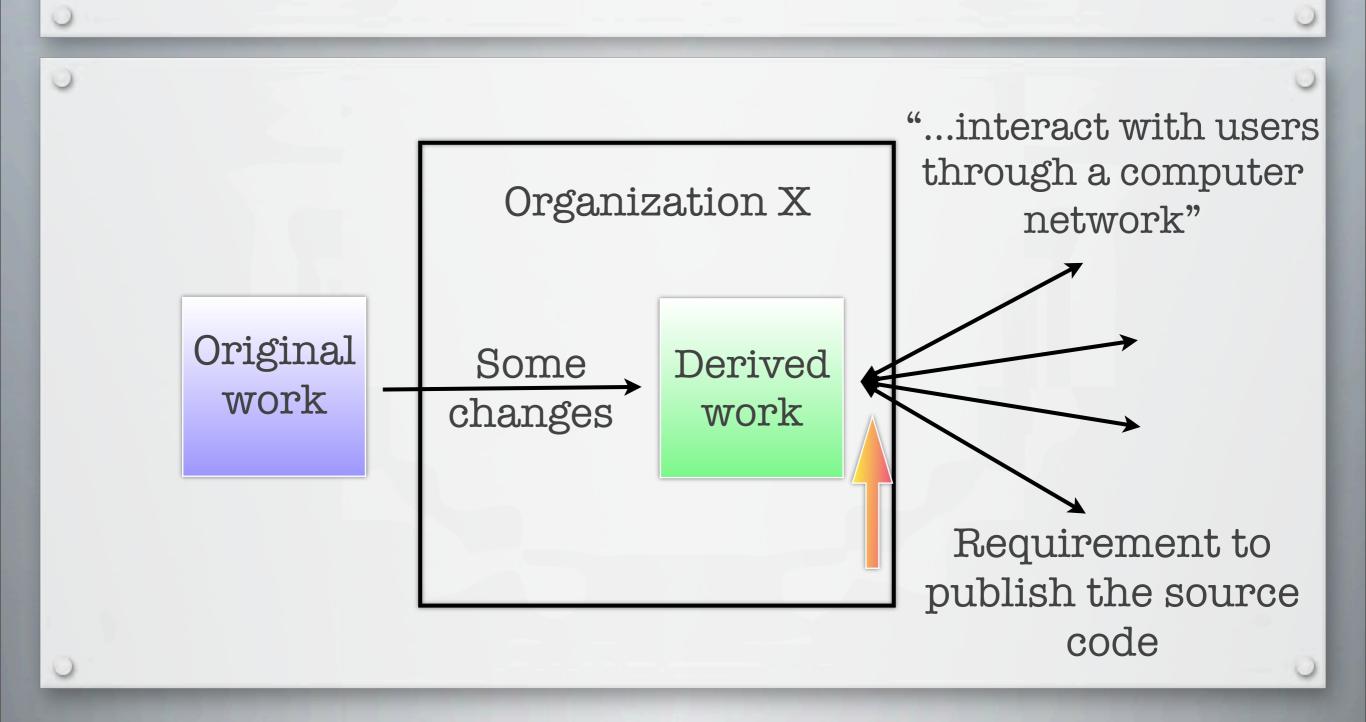


Free Software Foundation:

"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:



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?

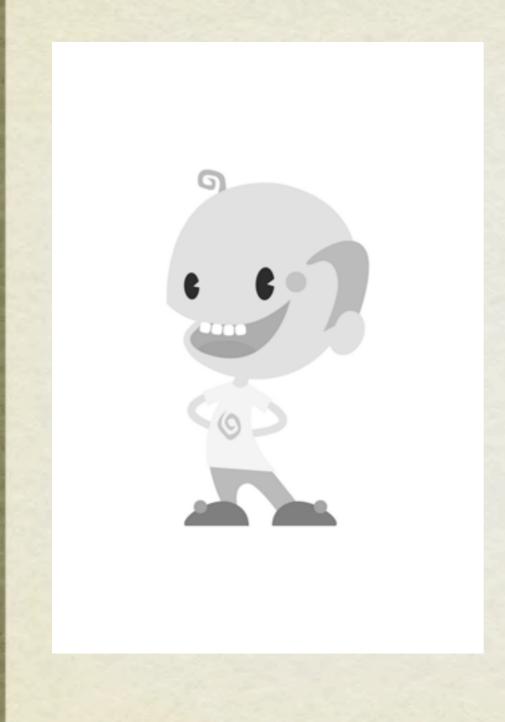
"The fees for registering and publishing one design are €350 for five years' protection. The system is "fee-decreasing" which means that in a multiple application, the fees for the second to 10 th design will be 50% of the basic fee each and less than 25% of the basic fee for the 11 th design onwards."

EXAMPLE: JOHN DEERE FORESTRY





EXAMPLE: MANNERHEIMIN LASTENSUOJELULIITON HÄMEEN PIIRIN KOTINEUVOLA OY



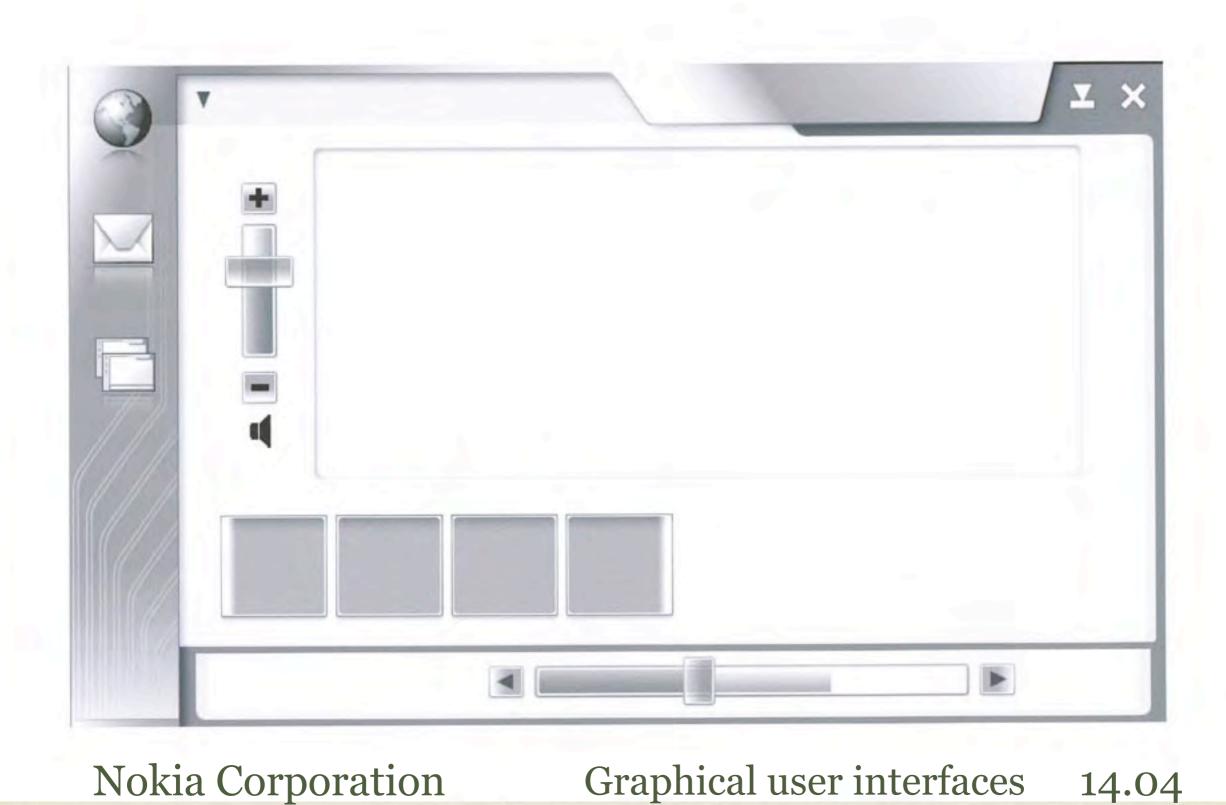




Microsoft nro. 000329560-0006



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Monday, November 16, 2009



Nokia Corporation

Graphical user interfaces

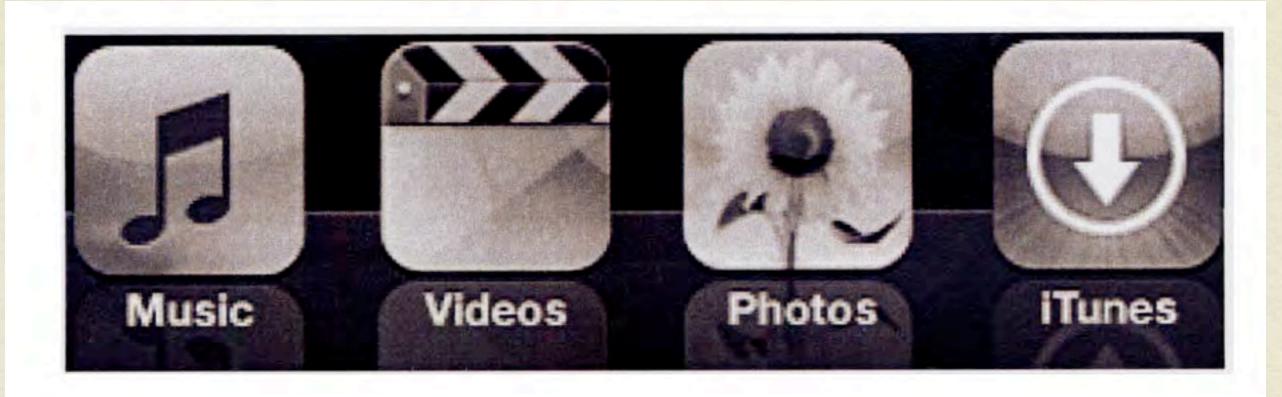
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Nokia Corporation

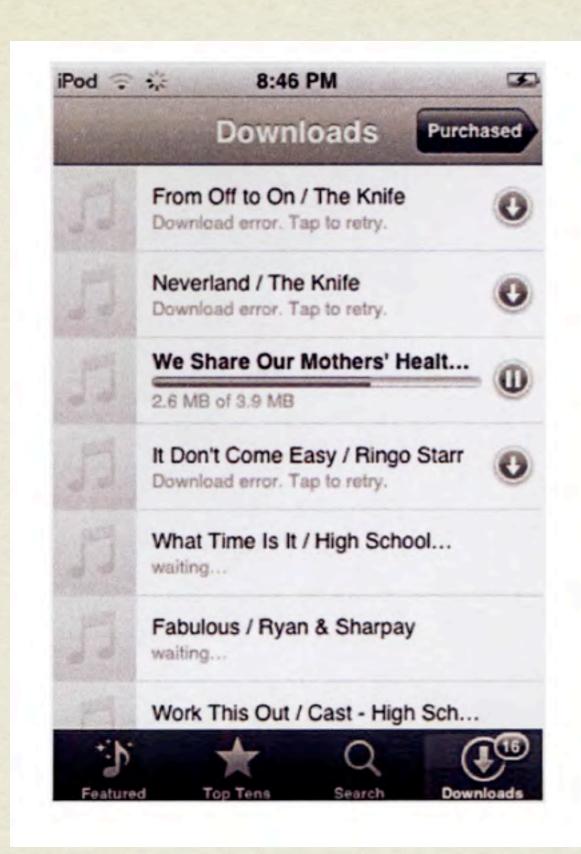
Logos, Graphic symbols

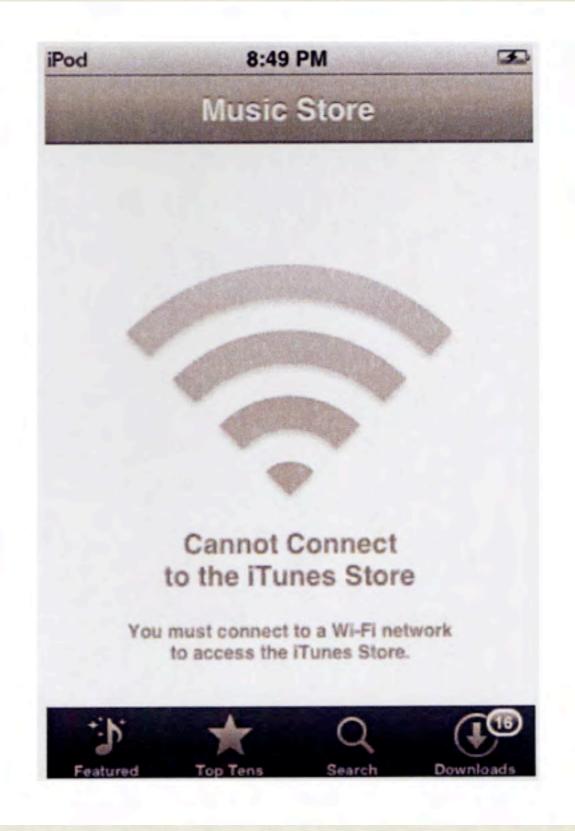




Apple Inc.

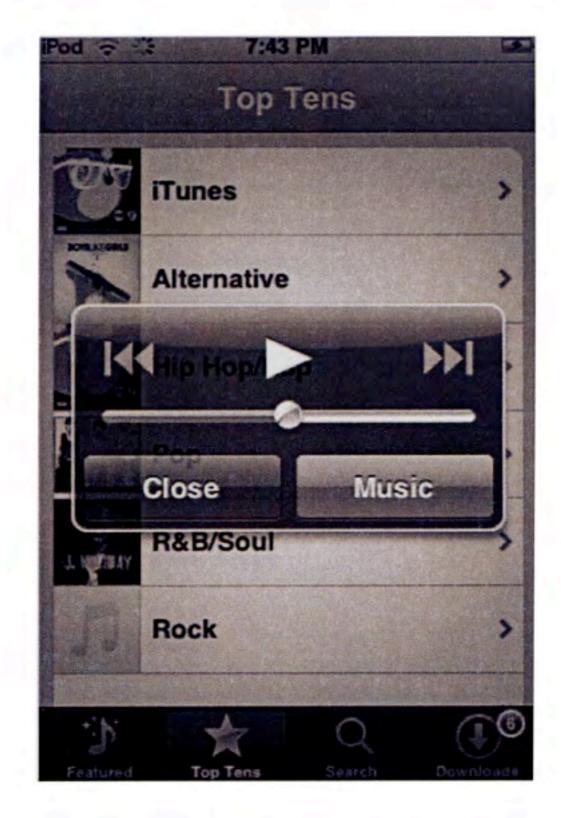
Graphical user interfaces





Apple Inc.

Graphical user interfaces



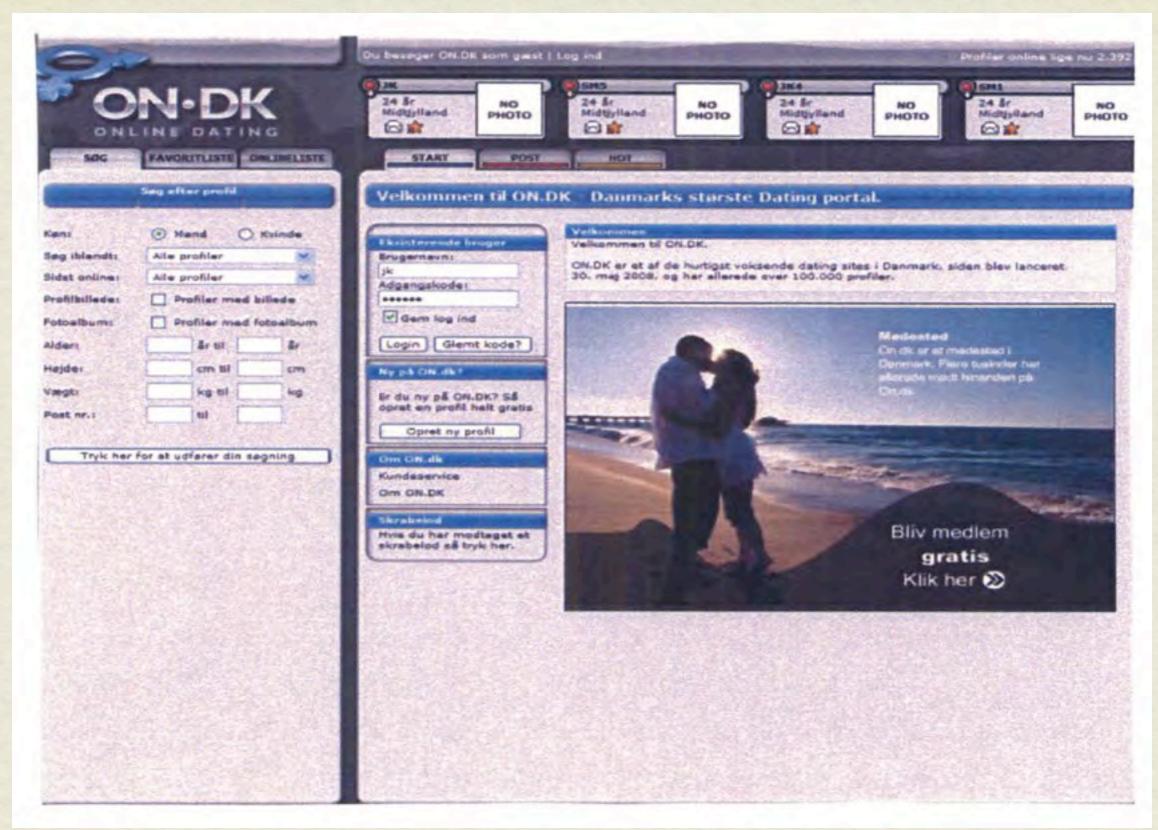
Apple Inc.



Graphical user interfaces

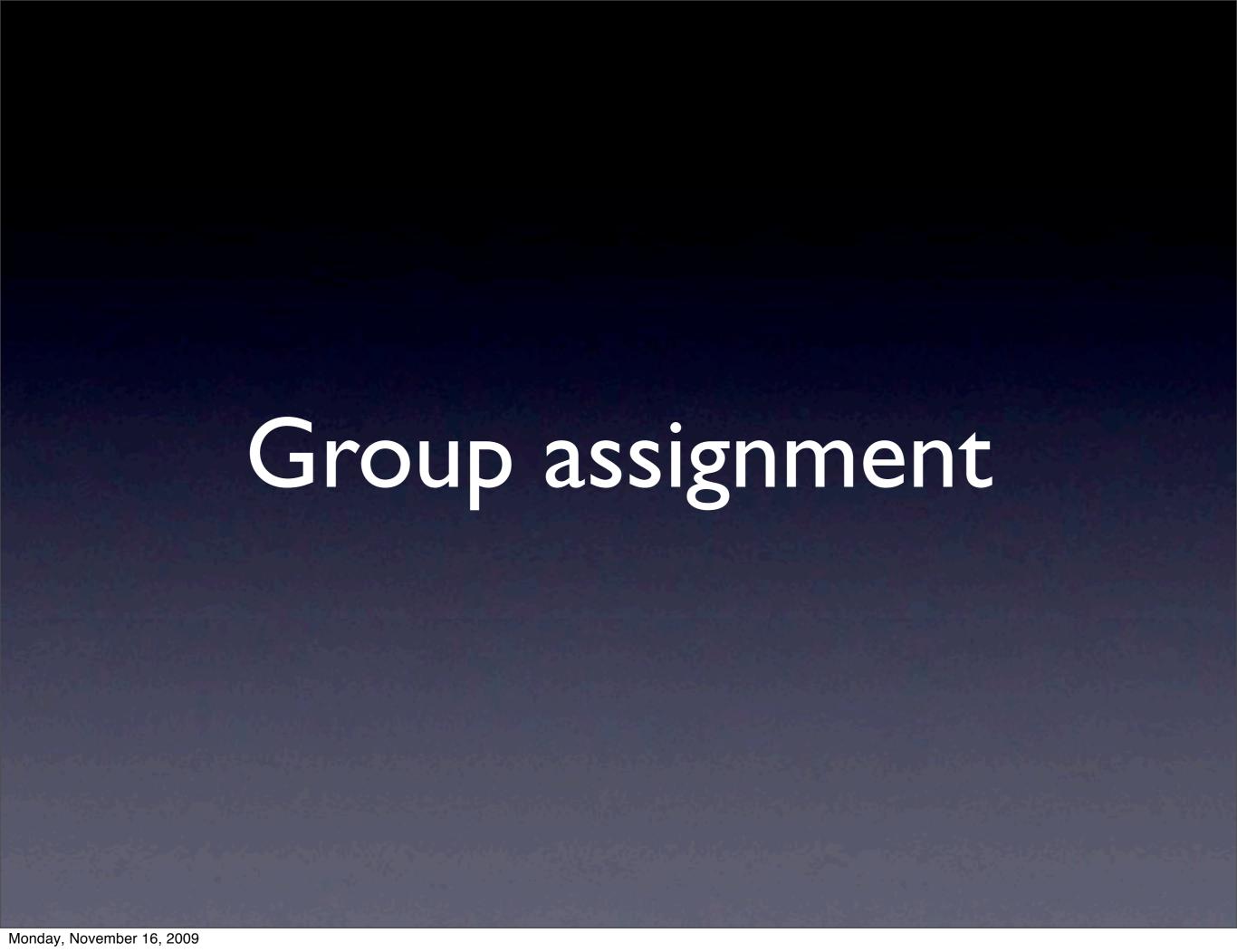


Monday, November 16, 2009



Aladdins ApS

Graphical user interfaces



Design a better IPR for Software

- What kind of protection should replace current patchwork of copyright, patent, design right and trade secret as a tool for creating enough incentive for software R&D and production?
- How long it should last?

- What elements should be protected
- What kind of publication requirements there should be (c.f. patent application)
- Any other features?