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To: rfidworkshop

Subject: Submission to the Federal Trade Commission - "Application of a unique identification number to items in trade, and attribution of the ownership of both item and number".

INTENT

This contribution aims to help all of the participants in the debate surrounding Radio Frequency Identification to think about the numbers used in RFID, and the privileges duties and responsibilities of ownership of things the numbers apply to, starting out from existing laws and customs. The writer is not a lawyer, the ideas expressed are his own and are therefore subject to clarification by experts. The implications of the possible extension of the rights of property should be understood and explored further.

OWNERS' MARKS

It has long been customary to mark property indelibly and permanently so as to ensure that its ownership is indisputable. Such identifying marks may be overt (like brands on cattle) or they may be legible only to persons equipped with a special means to render them legible (e.g. ink which fluoresces in ultra-violet light). The mark is always the property of its owner, or used with his explicit permission.

UNIQUE MARKS

Arbitrarily long identification numbers included either openly or secretly by means of encryption inside electronic or other data storage devices to be affixed to or embedded within real property offer an opportunity to protect and even enhance the rights of property.

STRONG AUTHENTICATION

It is obvious that adding a unique signature to an item such as a work of art can aid in attribution, track provenance and support property rights, including copyright.

Common and statute law ensure that the rights of the originator or the owner of such a work will be protected and enforceable. This is easier when his ownership is supported by a combination of signature, appearance, and attributable history or provenance, saved in a catalog or inventory.

The existence of an arbitrarily long and (in its context) unique identification number serves to strengthen the identification and therefore these rights, in part because they are plainly legible but only if they are legally enforceable.

TWO EXAMPLES OF ENHANCED RIGHTS

If a recognized work of art is marked by the application of such a unique item number the enhancement to the identification would be obvious, especially if the mark could be read at a distance or inside a container, where the work of art itself could not be seen. Property rights would be improved at the same time as recoverability and restitution were enhanced.

The rights and advantages accruing to the maker of a tin of beans, by indelibly and permanently adding a unique identification number to the tin are also widely recognized, in a more mundane context. For example it goes without saying that it is advantageous that the bean manufacturer can trace and recall his product in event of a quality problem, or a threat that the product or its contents could cause harm. Maintaining the number and its legibility and appropriate accessibility could become a duty incumbent upon subsequent owners, to be passed on with the good.

TRANSFERABLE TITLE

Once applied the unique number will remain the property of the owner of the good only until he has sold the number along with the good to which it applies. The purchaser of the good will become the new owner of the number. The owner

of the good and the number attached to it may decide what to do with the good and by extension what to do with the number.

CONFIDENTIALITY

In principle the owner of a number may keep the significance or meaning of that number confidential. If a third party can read the number this is not significant, he would need to be able to resolve what the number applied to to know what it was, and a third party has no such implied right. An exception to this rule would have to prove to be in the public interest. The owner of goods in transit (in the supply chain) might like to know that while the carrier would be responsible for delivering all of the items to their destination, the carrier has no implicit right to know the details of the content of the containers he was carrying.

RESTORING VISIBILITY OF AN INVISIBLE NUMBER

The owner of a privately held number might choose to publish the number in a limited context if he wanted for example to confirm his property rights if the associated good were stolen or mislaid, or to establish his rights of recourse if the item were to be defective.

OWNERSHIP

Like all property rights these rights may be held and traded by real persons or legal entities.

COPYRIGHT

By binding a good together with its associated unique identification number these implications will follow:

Once the good is sold and where the new owner or his heirs expressly do not wish it:

The use or keeping of the number in any way not specifically agreed by the owner is a breach of the owner's rights;

The publication of the number without the owner's consent would be breach of copyright;

The theft of the number associated with an otherwise anonymous tin of beans, is both easier to prove (a matter of record) and resolved (being unique)

CONTROL

Individuals could choose to keep their own inventory of assets, subject to audit, but there could also be a case for establishing a Secure Trusted Repository, where the owner has a duty to record a copy of his number together with a pointer to its owner, while specifying the use of the number under all circumstances (e.g. 'public', 'access limited to specified named entities', 'access only on a court order', 'to be destroyed following destruction or consumption' etc.)

IN CONCLUSION

The right of Property, the right to privacy, intellectual property rights including copyright and other rights not yet enumerated are all enhanced if the number uniquely assigned to a good is passed along with the good as it is traded. This does not limit the use of the number, by consent of the owner, for supply chain management or any other commercial purpose in furtherance of trade or safety.

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