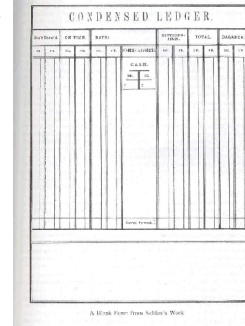


## Reverse Engineering and Interoperability

1

### *Baker v. Selden*



## 17 U.S.C. § 102(b)

- (b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

3

## § 107: Fair Use

- [T]he fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—
  - (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
  - (2) the nature of the copyrighted work;
  - (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
  - (4) the effect of the use upon the potential market for or value of the copyrighted work.

4

### *Sega v. Accolade*



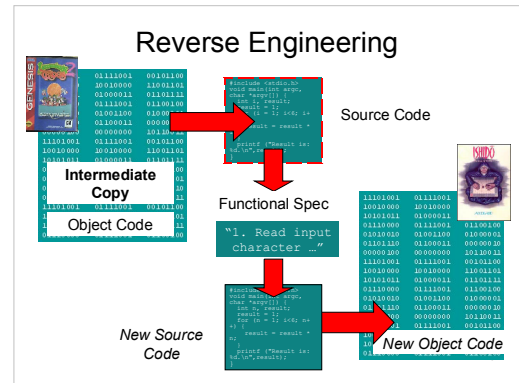
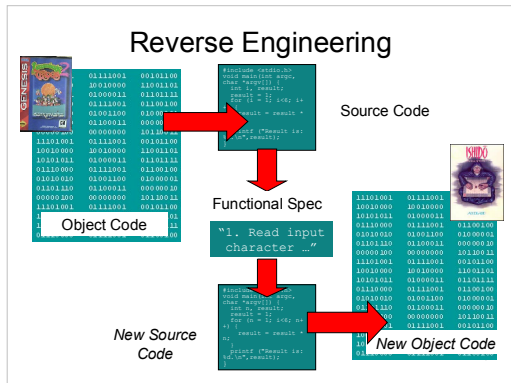
<http://www.skillreacator.org/tutorbit/megadriv/indief1.jpg>

5

### *Sega v. Accolade*



6

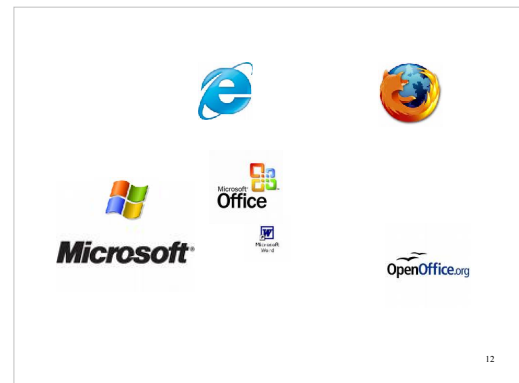


- ### The Four Factors
1. purpose and character of the use
  2. nature of the copyrighted work
  3. amount and substantiality of the portion used
  4. effect of the use upon the potential market for or value of the copyrighted work
- 9

### Sony v. Connectix

The image shows a PlayStation 2 console and a game controller next to a box for Connectix Virtual Game Station. The box advertises "Play Many Popular PlayStation Games on Your PC!" and lists "Frogger" as one of the games available. Below the image, a quote reads: "Even if you don't yet have a Sony PlayStation console..."

10





Should the law favor or prevent reverse engineering?

14

**Technical Interoperability**

- How does “interoperability” fit in the four-factor test?
- Is copying and reverse engineering for interoperability *per se* lawful?
- Are the courts making statutory or policy judgments?
- Competition or copyright policy?

15

**Law and Economics of R.E.**

- incentives to innovate
- incentives to follow-on innovation
- price
- wasteful expenditure

16