

**RFID Workshop - Comment, P049106**  
**The Samuelson Law, Technology, and Public Policy Clinic (the Clinic) at the**  
**University of California-Berkeley's Boalt Hall School of Law**

**Federal Trade Commission Public Workshop**  
**Radio Frequency Identification: Applications and Implications for Consumers**

We file this comment to emphasize the privacy issues related to tagging of information goods such as books, CDs, and DVDs. The potential for surveillance inherent to RFID technologies is uniquely invasive in the information goods context. Individuals have strong expectations of personal privacy in their choice of information goods, which are reinforced by social norms, public policy, and law. While the privacy issues in information goods are particularly keen, large-scale item level tagging has already begun. More than 130 libraries in North America have tagged their holdings, including books, music, and video, at the item level.<sup>1</sup> Libraries thus provide a useful case study to examine the actual risks to privacy posed by RFID in one context. There is reason to believe that item level tagging of information goods will expand into the retail space and will increase dramatically in coming years.<sup>2</sup> For these reasons it is important to assess these privacy threats and to take appropriate technical and policy measures.

In this comment, we examine briefly the normative, legal, and policy connections between privacy, the First Amendment, and information goods. We distinguish the treatment of information goods in the retail and library settings and describe the technical differences between tags and readers used in each setting. Next we describe the threats to privacy created by the introduction of RFID into these settings. We describe our work with the Berkeley Public Library as a case study. In conclusion we recommend that the FTC (1) conduct a special workshop for the use of RFID with information goods to more carefully assess the implications in this unique environment, and (2) develop a guideline for RFID use that clarifies which practices may be deceptive or unfair.

## **2.0 Information Goods, Institutional Norms, Individual Expectations, and Law**

Individuals have strong expectations of privacy in their choice of information content for reading, listening, and viewing. These norms are reflected in the culture and policies of institutions that provide information goods, as well as statutory and constitutional protections.

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<sup>1</sup> As of mid-2003, approximately 200 libraries had installed RFID systems. Large-scale implementations include the University of Connecticut, the University of Nevada, and the Las Vegas Library in the U.S., along with the Vienna Public Library, the Catholic University of Leuven in Belgium, the National University of Singapore, and the Netherlands Library Service. Richard W. Boss, RFID Technology for Libraries; Radio Frequency Identification Systems, 39 *Library Technology Reports* (Vol. 6) 1 (2003); *see also* RFID in Libraries, at <http://libraryrfid.typepad.com/libraryrfid/> (a weblog tracking current library RFID implementations).

<sup>2</sup> Some grocery outlets have begun to adopt the technology in Germany (*see* <http://www.topix.net/tech/rfid>), and in England (<http://www.rfidjournal.com/article/articleview/658/1/1/>); Industry analysts predict widespread adoption of item level retail RFID tagging by 2005 – 2008 (*see* <http://www.ftc.gov/bcp/workshops/rfid/boone.pdf>)

