where we stand

- patents
- copyrights
- trademarks
so what are we talking about?

what is property?

in what way is information property?

"No good case exists for the inequality of real and intellectual property, because no good case can exist for treating with special disfavor the work of the spirit and the mind”

Helprin
aspects of property

what is property?
rules governing access to material goods

kinds of property
common
collective
private

properties of private property
rivalrous
excludable

property rights
how extensive?
one right--or a bundle?

"No one shall be ... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation"
how acquired?

*occupatio*, for property *res nullius*

--*Codex Justinianus*, 534

**Blackstone's rules for acquisition**

- descent
- purchase
- escheat
- occupancy
- prescription
- forfeiture
- alienation
property & occupation

Mr Moore's spleen
& 'human ingenuity'

United States Patent
Golde, et al.

4,438,032
March 20, 1984

Unique T-lymphocyte line and products derived therefrom

Abstract

Human T-lymphoblast cell line, Proteinaceous products produced therefrom, messenger RNA and DNA expressing the proteinaceous products. A human T-lymphoblast cell line (Mo) maintained as a continuous culture constitutively produces proteins, including immune interferon, neutrophil migration inhibition factor, granulocyte-macrophage colony-stimulating activity and erythroid-potentiating activity, as well as other proteins produced by T-cells.

Inventors: Golde; David W. (Los Angeles, CA); Quan; Shirley G. (Los Angeles, CA)
Assignee: The Regents of the University of California (Berkeley, CA)
Appl. No.: 08/456,177
Filed: January 6, 1983
Though the Earth...be common to all Men, yet every Man has a Property in his own Person. This no Body has any Right to but himself. The Labour of his Body, and the Work of his Hands, we may say, are properly his. Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his Labour with, and joyned to it something that is his own, and thereby makes it his Property. It being by him removed from the common state Nature placed it in, it hath by this labour something annexed to it, that excludes the common right of other Men.

---Two Treatises of Government, 1689

John Locke
1632-1704
"A Book is the Author's Property, 'tis the Child of his Inventions, the Brat of his Brains; 'tis as much his own, as his Wife and Children ... [but] these Children of our Heads are seiz'd, captivated, spirited away, and carry'd into Captivity".

--Defoe, Review
Diderot's thoughts

"What form of wealth could belong to a man ... if not the work of his own thoughts"

--Denis Diderot

Denis Diderot
1713-1784
"That any person or company should have patents for the sole printing of ancient authors is very unreasonable ... it may be reasonable to limit their property to a certain number of years after the death of the author, or the first printing of the book, as suppose fifty or seventy years".

--Locke to Edward Clarke, 1682/3
"There seems ... to be in authors a stronger right of property than by occupancy; a metaphysical right, a right, as it were of creation, which should from its nature be perpetual; but the consent of nations is against it, and indeed reason and the interests of learning are against it; for were it to be perpetual, no book, however useful, could be universally diffused amongst mankind, should the proprietor take it into his head to restrain circulation."

--Samuel Johnson
problems with information

"... no one possesses the less because everyone possesses the whole of it. He who receives an idea from me receives [it] without lessening [me], as he who lights his [candle] at mine receives light without darkening me."

rivalrous?

excludable?

a public good?
property for all?

China
"I transmit rather than create."
--Confucius

Islam
Shari'a law against
"imposture" and "fraud" but not theft

Christianity
"Scientia Donum Dei Est
Unde Vendi non Potest"
--Canon law
early disagreement

Abbot Fennian & St Columba
560s: dispute over the psalter
"St Columba, sitting up all night ..., furtively made a copy of abbot Fennian's Psalter... the abbot protested ... and brought an action in detinue ... for Columba's copy .. King Diarmed .. gave judgement for the abbot, saying la gache boin a boinin, ..."to every cow her calf, and accordingly, to every book its copy."

--Birrell, Seven Lectures on the Law and History of Copyright, 1899
untangling privileges
patents & copyrights

regulation
825: Chinese regulation of almanacs

privileges
1236: Bonafasus' dyeing
1332: Bartholomeo Verde's windmill

patents
1421: Brunelleschi's boat
1441: Eton stained-glass
Venice's contribution

1469: John Speyer, printing patent, Venice

1474, Venetian patent law
"whoever makes in this city any new and ingenious device, not previously made within our jurisdiction, is bound to register it at the office of the Provveditori di Comunas soon as it has been perfected, so that it will be possible to use and apply it"

1496: Aldus Manutius' first patent

1502: patent on italic
"Know ye that we, considering and manifestly perceiving that certain seditious and heretical books rhymes and treatises are daily published and printed by divers scandalous malicious schismatical and heretical persons ... wishing to provide a suitable remedy ..."

patent privileges

1504: William Facques, "King's printer"

1504: Guillaume Cop, Paris University signed almanac

1511: Durer's, patent

guild privileges

Venetian glassblowers

English Stationers' company 1557 monopolies on bibles, prayer books, almanacs, law books, music, ...
All Monopolies and all Commissions, Grants, Licences, Charters and Letters Patent heretofore made or granted or hereafter to be made or granted to any Person or Persons, Bodies Politick or Corporate whatsoever, of, or for the sole Buying, Selling, Making, Working or Using any Thing within this Realm... or of any other Monopolies, or of Power, Liberty or Faculty... are altogether contrary to the Laws of this Realm, and so are and shall be utterly void and of none effect ... any Declaration before mentioned, shall not extend to any Letters Patents and Grants of Privilege for the Term of one and Twenty Years, or under, heretofore made of the sole Working or Making of any Manner of new Manufacture within this Realm, to the first true Inventor or Inventors of such Manufactures.

Statute of Monopolies, England, 1623
"the old patentees and monopolizers."

"We must not think to make a staple commodity of all the knowledge in the Land, to mark and licence it like our broad cloath, and our wool packs.

"And though all the winds of doctrine were let loose to play on the earth, so Truth be in the field, we do injuriously by licensing and prohibiting misdoubt her strength. Let her and Falsehood grapple; who ever knew Truth put to the worse in a free and open encounter?"

--John Milton, Areopagitica, 1644
"The law would also put a Stop to a certain sort of Thieving which is now in full practice in England, and which no Law extends to punish, viz, some Printers and Booksellers printing Copies not their own.

"This is really a most injurious piece of Violence, and Grievance to all Mankind ... robs Men of the due Reward of Industry ... robs the Reader, by printing Copies of other Men uncorrect and imperfect, making surreptitious and spurious collections

"...the printing of other Mens Copies...as unjust as lying with their Wives."
printers' patent to authors' copyright

why copyright in 1710?

-- growing readership
   the reading nation

-- politics and the public sphere

-- the end of patronage

-- 1694/5: end of licensing acts
   booksellers v printers
"A new law to give learned men property they had not had before."

--Attorney General Thurlow

"The clause in the law is a patent to the author and settles the propriety of the work wholly in himself, or in such to whom he shall assign it."

--Defoe, Essay on the Regulation of the Press
"The clause in the law is a patent to the author and settles the propriety of the work wholly in himself, or in such to whom he shall assign it."

—Defoe, *Essay on the Regulation of the Press*

"A new law to give learned men property they had not had before."

—Attorney General Thurlow

**Whereas ...**

1710: statute of Anne

"any books or books already printed ...."

"any book ... not printed ..."

"nothing ... unless the title ... be ..."

"if any Bookseller ... sell or expose to sell any book ..."

"provided that nine copies ..."
1741: Pope v. Curll

"it is only a special property in the receiver, possibly the property of the paper may belong to him; but this does not give a licence to any person whatsoever to publish them."

Lord Chancellor Hardwicke
"style and sentiment are the essentials of literary composition. These alone constitute its identity. The paper and print are merely accidents, which serve as vehicles to convey that style and sentiment to a distance. Every duplicate therefore of a work, .... if it conveys the same style and sentiment, is the same identical work ... a duplicate of a mechanical engine is, at best, but a resemblance"

-Blackstone

"Proper Words in proper places makes the true Definition of Style"
   Swift, 1721

"Manner of writing with regard to language"
   Johnson, Dictionary
"not quite right"

1774 Donaldson v Becket
booksellers defeated

"learning would be locked up in the hands of the Tonsons and the Lintots of the age, till the public become as much their slaves, as their own hackney compilers are"

--Lord Camden

"a metaphysical right ... [or] consent of the nation"

--Johnson
meanwhile ...

at the patent office
US patent law, 1790
revised, 1836

UK Statute of Monopolies, 1623
Patent Law Amendment Act, 1852
Patent reform, 1883

France 1791, 1800, 1844

patent confusion
"SDG" [sans garantie du gouvernement]

patent resistance
copyright boundaries

international trade and © concerns
"vile French pirates"
--William Wordsworth

1842 UK copyright law
containing a provision for making reciprocal copyright arrangements

US resistance
American Notes for General Circulation
--Charles Dickens, 1842

Life of Jesus
--Ernst Renan, 1863
international agreement

1858 Brussels congress

1886 Berne convention
  Germany, Belgium, Spain, France, Haiti, Italy,
  Switzerland, UK, Tunisia

intermediate revisions
  newspapers, translations, performance,
  mechanical reproduction, cinema (1908)
  oral works, moral rights (1928)

1988 US joins Berne convention
  no © notice required
  no registration required
"The United States takes the view that anything made by man, under the sun, can be patented. And they have granted patents for business methods, mainly computer business methods. But as far as I can see, it would cover a new and improved method of stacking oranges on a barrel.

"Every change .. tend[s] to advance the producer interest against the consumer" --St Clair, Reading Nation

"The course of twentieth century American copyright law ... has been a story of the steady strengthening of the proprietary rights of intellectual property owners at the expense of access and interest" --Carla Hesse, "The Rise of Intellectual Property"
the missing leg?

**Trademark law**
- France, 1803, 1824, 1857
- California, 1862
- United States, 1870, 1881, 1906, 1920, 1946
- United Kingdom, 1862, 1876, 1905, 1938

*Pernod Sells Wild Turkey Brand to Gruppo Campari*

By DAVID JOLLY
Published: April 8, 2009

*InBev Looks to Expand Budweiser’s Reach*

By MARK LANDLER
Published: July 15, 2008

FRANKFURT – Now that a Belgian brewer has conquered the King of Beers, it wants to take Budweiser global.
legal determinism

1870: revision of patent office
registration of trademarks and
the "second industrial revolution"

1879: the trademark cases
is it intellectual?
is it an invention?
is it progressive?

-- USSC: NO

1881 - 1906: foreign treaty and indian tribes

1906: commerce clause

"The Congress shall have power ...

"To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries"
restrictive practices?

Bass "will make no objection ..."
culture jamming

and jamming culture jamming
going global

Bass in Boston
Wendell & Co, Distributors, 1894

16 Feb: "engaged a reliable man to act as an amateur detective and his Agent is working up the case"

1 Sept: "Employed Detective, $7 a day and expenses"

18 Sept: "'Jim Stewart" rented desk in Wendell's Place"

23 Sept: "Searched office but found no letters ... feel sure secrets in Warehouse and must find means to get into it"

22 Feb, 1885, Wendell gets 5 months hard labour
supply-chain struggles

bottlers, printers, retailers
Guinness & San Francisco, 1899

Star Bottling Works
McGraw bros
Schults, H.A.
Schranz & Waizman
Schroder, H
Francis, S.
Puvogal, Jno
Zanganelli
Grocer, Name unkwn
ditto
Tweedie, Daniel
Burnell

Stanyan & Waller sts
401 or 418 Devisadero St
Post & Larkin Sts
601 Baker st, cor McAllister
220 California St
430 6th St
36 6th St
6 Mason St
267-269 Third St
121 Third Street
408 Eight St
408 Battery

Schomaker bros
Alper Bros
Wolking & Co, H.
Serris, J.
Pontag
Bennett & Witmer
E&G Gold Rule Bazar
Edlef Atzroth
Riechers, F.W.
Family Liquor Store
Shamrock Saloon
Miesner, Peter
Kruse, Fred

4th & Bryant
5th & Clara
565 Fourth St
4th & Howard
138 Fifth St
Cor. Ellis & Stockton Sts
Market Bet 4th & 5th st
336 Fift Street
601 Larkin St
871 Larkin St
923 Howard
Cor. Ellis and Taylor St
more chains

Colman in New York
"excitement among grocers"

The Bull's Head Label—Excitement Among the Grocers—Meeting of the Board of Trade—Wholesale Lawsons by an English Firm.

A special meeting of the Importers and Grocers' Board of Trade was held yesterday afternoon at the rooms of the Board, for the purpose of taking action in reference to a large number of suits that have been brought against members of the board by J. & J. Colman, of London, through their agents and attorneys. These suits are in equity to recover damages arising from alleged infringements of trade-marks. P. B. Youmans was called to the stand, and A. H. Kesey served as secretary. The chairman read the following papers, setting forth the object for which the meeting had been called:

About four months since we noticed in the newspapers that the well-known English firm had begun an action in equity against a trade-mark, using bull's heads in New York, for manufacturing branded bottles bearing a bull's head, which is asserted they claim as a trade-mark. During the progress of the suit a report was published that the manufacturers for the alleged firm had prepared a large number of new bottles and containers, dealers and grocers for selling these of mustard bearing a bull's head. Against this report the manufacturers of the action were held in their hands. As the device of a bull's head had been used in this country for many years in connexion with the manufacture of mustard. The suit is now pending.
the rise of intangible assets
the power of brands

computer?

OS?

processor?

hard drive?

2000
6 hard drive companies
196 million disks
0 profit

Dell: 7%
Microsoft: 31%
Intel: 13%
TM -- why worry?

**dilution**

**perpetual property**

**Philips v Remington**

**which side are you on?**

2000

- April: Rock band Metallica sues Napster for copyright infringement. Yale and Indiana University ban service from campus.

- Dec.: Napster sues an online clothes retailer for allegedly using its cat-like logo without permission on T-shirts and hats for sale.

**Klein v. Economist**
"New products are associated with old brand names. This ensures the prospective consumer of the quality of the product. "Doctors, lawyers, and barbers, the high school diploma, the baccalaureate degree, the Ph.D., the Nobel Prize, ... reputation and labor markets themselves have their own 'brand names' ".

“New products are associated with old brand names. This ensures prospective consumers of the quality of the product.

“Doctors, lawyers, and barbers, the high school diploma, the baccalaureate degree, the Ph.D., and the Nobel Prize, ... function as ‘labels’ that market themselves. ‘... and the Market Mechanism,”’