information as property

History of Information

March 15, 2011
coming up

midterm

exam

In class midterm on March 17.
Arrive promptly at 2 pm.
Bring a blue/green book.

essay

March 16 at midnight: paper is due. No extensions will be granted, and no late papers will be accepted. Please submit one electronic copy submitted via bSpace ... in the following format: FIRSTNAME-LASTNAME-103.doc.
“The Disabled Students’ Program (DSP) is looking for a Note-Taker! If you take clear, well-organized notes, this is a good opportunity for you to assist a fellow student and receive pay. Please come to the Disabled Students’ Program Office and fill out an application. We are located in 260 Cesar Chavez right beside The Golden Bear Café. The application is also available online at dsp.berkeley.edu on the ‘Note-Takers Needed This Semester’ link. If you have any questions, please send an email to dspnotes@berkeley.edu.”
where does it fit?
Renault Apologizes to Employees Fired in Spy Case

PARIS — Renault apologized on Monday to three executives that it had accused of industrial espionage as the focus of the inquiry turned to an internal security agent who had been investigating the case.

In a matter that has gone from sensational to embarrassing, Carlos Ghosn, Renault’s chief executive, and Patrick Pélata, the chief operating officer, presented their “sincere apologies and regrets, personally and in the name of Renault,” to the three fired employees.

The Paris prosecutor, Jean-Claude Marin, said the investigation had shifted toward “a possible swindle” inside Renault’s internal intelligence service, which acts as an internal policing and security service.

“At this stage we do not know whether we are dealing with just fraud or a deliberate attempt to destabilize Renault,” he said.

At an extraordinary board meeting late Monday, Mr. Pélata offered to resign, fulfilling a pledge that he made last week. But Mr. Ghosn did not accept the
US Patent Office Grants Massively More Patents Than Ever Before
from the this-is-not-good dept

Commerce Secretary Gary Locke has made it clear that he wanted to US Patent and Trademark Office (USPTO) to clear out some of the backlog on patents, and it quickly became clear early last year that the way the USPTO was doing this was by simply approving more patents while giving less scrutiny to the patents in question -- meaning that we're now getting a ton of bad patents approved. It seemed like an obviously bad sign when we passed the total number of patents approved in 2009 by October of 2010.

Now the final numbers are in: nearly 220,000 patents granted (219,614 if you want to be exact), a massive 31% increase over 2009 and still significantly more than ever before in history. The highest previous year was 2006, when a mere 173,772 patents were granted. So this is still 27% more patents granted in a single year than ever before. I find it hard to believe -- as USPTO supporters claim -- that the Patent Office suddenly figured out how to approve 30% more patents without decreasing the quality. Patently-O put together this lovely chart to demonstrate the pattern:

Annual Patent Grants
(USPTO Utility Patents)
overview

skin in the game
rights and wrongs
what is property (and iproperty)
systemizing iproperty
patent split
copyrights
patents
trademarks
skin in the game?

patents

trademarks

copyrights
Student Hit With $675,000 Fine in RIAA File-Sharing Case

Joel Tenenbaum has lost his trial against the RIAA and was ordered to pay $22,500 for each of the 30 songs he shared via Kazaa. Tenenbaum, who pleaded guilty to downloading and sharing files earlier this week, will be left paying off the $675,000 to the music labels for the rest of his life.
emerging here and there?

prices are too high
antipiracy education has failed
changing the law is easy. changing the practice is hard
criminals can’t compete with free enforcement hasn’t worked

SSRC, Media Piracy in Emerging Economies, 2011
"We're going to aggressively protect our intellectual property ... Our single greatest asset is the innovation and the ingenuity and creativity of the American people ... It is essential to our prosperity and it will only become more so in this century. But it's only a competitive advantage if our companies know that someone else can't just steal that idea and duplicate it with cheaper inputs and labor. ... There's nothing wrong with other people using our technologies, we welcome it ... We just want to make sure that it's licensed and that American businesses are getting paid appropriately. That's why the [US Trade Representative] is using the full arsenal of tools available to crack down on practices that blatantly harm our businesses, and that includes negotiating proper protections and enforcing our existing agreements, and moving forward on new agreements, including the proposed Anti-Counterfeiting Trade Agreement."
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sampling?
beyond sampling?

Pink Floyd score victory for the concept album in court battle over ringtones

EMI told not to sell single tracks as downloads in ruling which could mean further losses for music label

Robert Booth
guardian.co.uk, Thursday 11 March 2010 20.54 GMT
Article history

David Gilmour and Roger Waters of Pink Floyd at the Live 8 concert in Hyde Park,
Ten songs stolen by politicians

By Cat Koo
BBC News

Swedish band Abba is suing a Danish anti-immigration party for using their song, Mama Mia in a rally.

The youth wing of the party sang the song, changing its lyrics to suit their far-right agenda.

But the Swedish legends are by no means the only musicians to object to politicians using their work. Here are 10 others:
"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."

--Mark Helprin, Digital Barbarism, 2009

"a rhetoric of intellectual property better suited to ancient Athens than Modern Washington ... arbitrary and fictive distinctions between types of property ... more legislative relief."

--I. Horowitz, Publishing as a Vocation, 2010
"There is a great deal of nonsense talked about international copyright. The proper way to treat a copyright is to make it exactly like real-estate in every way.' What I saw with the greatest clearness was mark Twain being forced to fight for the simple proposition that a man has as much right to the work of his brains ... as to the labour of his hands."

--Rudyard Kipling, 1899

"An Interview with Mark Twain"
"In order that a piece of knowledge ... may be used to earn a profit, its "producer" may be given proprietary rights ... this raises a grave difficulty. The full benefit of knowledge is only reaped when its circulation is free ... to limit its use, society is made the poorer ... the mere exercise of proprietary rights in the product of the enterprise ... involves the establishment of a harmful monopoly."

--Michael Polanyi, "Patent Reform," 1944
Confucianism

"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
Mr Moore's spleen
& 'human ingenuity'

United States Patent
Golde, et al.

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.: 06/456,177
Filed: January 6, 1983
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so what are we talking about?

what is property?

"a curious spectacle ... multitudes of advocates and all the judges in and out of office talking about property in general, not one of them knowing what it was, nor how it was created; it was an assembly of blind men disputing about colours."


in what way is information property?
aspects of property

what is property?

what kinds of property ownership?

properties needed for private property?

limitations on property rights

"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"
aspects of property

what is property?
- rules governing access to material goods

what kinds of property ownership?
- common
- collective
- private

properties needed for private property?
- rivalrous
- excludable

limitations on property rights
- how extensive
- how many: 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"

Tuesday, March 15, 2011
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HofI I-IP 23
"... 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."
how acquired?

occupatio, for property res nullius

--Codex Justinianus, 534

Blackstone's rules for acquisition

descent
purchase
escheat
occupancy
prescription
forfeiture
alienation
CHAPTER XIV.

Of Title by Descent 200 to 234
1. The title to things real may be recusally acquired or lost: I. By descent. II. By purchase.
2. Descent is the means whereby a man, on the death of his ancestor, acquires a title to his estate, in right of representation, as his heir-at-law. 201
3. To understand the doctrine of descents, we must form a clear notion of consanguinity; which is the connection or relation of persons descended from the same stock or common ancestor; and it is, I. Lineal, where one of the kin men is lineally descended from the other. II. Collateral, where they are lineally descended, not one from the other, but both from the same common ancestor. 203-4
4. The rules of descent, or canons of inheritance, observed by the laws of England, are these: Inheritances shall lineally descend, to the issue of the person last actually seized, in infinitum; but shall never lineally ascend. The male issue shall be admitted before the female. Where there are two or more males in equal degree, the eldest only shall inherit; but the females all together.

CHAPTER XVI.

Of Title by Occupancy 258 to 261
1. Occupancy is the taking possession of those things which before had no owner. 258
2. Thus, at the common law, where the tenant per eerter esse died during the life of custos qui vis, he who could first enter might lawfully retain the possession; unless by the original grant thereof the intestate had made a special occupation. 259
3. The law of dexterity and alluvion has narrowed the title by occupancy. 261

CHAPTER XVII.

Of Title by Prescription 263
1. Prescription (as distinguished from custom) is a personal immemorial usage of enjoying a right in some incorporeal heritament; but not in fee simple, nor in fee firme. The lineal descendants, in infinitum, of any person deceased, shall represent their ancestor; that is, shall stand in the same place as the person himself would have done, had he been living. On failure of lineal descendants, or issue, of the person last seized, the inheritance shall descend to the blood of the first purchaser; subject to the three preceding rules. To evidence which blood, the two following rules are established.
The collatoral heir of the person last seized must be his next collatoral kinsman, of the whole blood. In collateral inheritances, the male stocks shall be preferred to the female; that is, kindred derived from the blood of the male ancestors shall be admitted before those from the blood of the female: unless where the lands have, in fact, descended from a female.

CHAPTER XVIII.

Of Title by Forfeiture 267 to 268
1. Forfeiture is a punishment annexed by law to some illegal act, or negligence, in the owner of things real; whereby the estate is transferred to another, who is usually the party injured. 268
2. Forfeitures are occasioned. I. By crimes. II. By alienation, contrary to law. III. By lapse. IV. By simony. V. By non-performance of conditions. VI. By waste. VII. By breach of copyhold customs.

CHAPTER XIX.

Of Title by Alienation 278 to 294
1. Alienation, conveyance, or purchase in its more limited sense, is a means of transferring real estates, wherein they are voluntarily resigned by one man, and accepted by another. 278
2. This formerly could not be done by a tenant, without licence from his lord; nor by a lord, without attornment of his tenant. 278
3. All persons are capable of purchasing; and all, that are in possession of any estates, are capable of conveying them; unless under peculiar disabilities by law: as being attainted, non compos, infants, under duress, female, converts, aliens, or papists.
4. Alienations are made by common assurances; which are, I. By deed, or in pari. II. By matter of record. III. By special custom. IV. By devise.

CHAPTER XX.

Of Alienation by Deed 295 to 342
1. In assurances by deed may be considered, I. Its general nature. II. Its several species. 295
2. A deed, in general, is the solemn act of the parties: being, usually, a writing sealed and delivered; and it may be, I. A deed iacent, or indenture. II. A deed poll.
"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."

--John Locke, *Two Treatises of Government*, 1689
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.

--Daniel Defoe, Review, 1710
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--Daniel Defoe, Review, 1710

"blame Lysias, who is the father of the brat, and let us have no more of his progeny ..."
from brats to calfs

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 ... 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
"What form of wealth could belong to a man if not a work of the mind... if not his own thoughts.. What comparison could there be between.. the very substance of a man, his soul, and a field, a tree, a vine... that an individual has only appropriated through cultivating it?"

--Denis Diderot

*Lettre Historique et Politique sur le Commerce de la Librarie*, 1763
"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..."

--Samuel Johnson, 1773
Edward Young, Conjectures on Original Composition, 1759

"every Author, as far as he is great and at the same time original, has had the task of creating the taste by which he is to be enjoyed,"

William Wordsworth, Lyrical Ballads, 1802
originality?

True Wit is Nature to advantage dress'd
What oft was thought, but ne'er so well express'd

Alexander Pope, "Essay on Criticism," 1708
limited ownership

"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, 1773
Locke's limits

"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
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patents
trademarks
great inventions

"I have already intimated my opinion that in the world's history, certain inventions and discoveries occurred, of peculiar value, on account of their great efficiency in facilitating all other inventions and discoveries. Of these were the arts of writing and of printing -- the discovery of America, and the introduction of Patent-laws. The date of the first, as already stated, is unknown; but it certainly was as much as fifteen hundred years before the Christian era; the second -- printing -- came in 1436, or nearly three thousand years after the first. The others followed more rapidly -- the discovery of America in 1492, and the first patent laws in 1624."

--Lincoln, "Discoveries and Inventions," 1859
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
1504: William Facques, "King's printer"

1504: Guillaume Cop, Paris University
signed almanac

1511: Durer's patent

**Art 1 § 8 Cl 8**: 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*;
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"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 ..."

*Stationers' Charter, 1557*

*monopolies on bibles, prayer books, almanacs, law books, music, playing cards ...*
"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."

--Statute of Monopolies, England, 1624
inventions

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.
"Provided also that all lettres Patentes and grauntes heretofore made and hereafter to be made of the priviledg of the sole printing of the Bible or booke of Common prayer or of the psalms psalter or anie other Bookes lawfully auctorized and allowed, or to be soe auctorized or allowed to be used in and for the publique divine service and worshipp of God or of anie bookes of the Common lawes or Statutes of this Realme or of anie proclamacion sett fourth or to be sett fourth by his Majestie his heires or successors or of Jumus and Tremellius Bibles or of Lillies Grammar or of Prymers or Almanackes shal be alsoe of such force as they were or should bee if this Act had never bene had or made and of none other, Provided alsoe that this act shall not extend to the Restraint or makinge voyde of one Patent of Priviledge for the sole printinge and selling of a Booke called..."
Truth in the field

civil war ends printing privileges

"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

peace brings them back (1662)
"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."

--Defoe, *Essay on the Regulation of the Press*, 1704
"this law ...

1694/5: end of licensing acts

changing views of print

-- growing readership

the reading nation

-- politics and the public sphere

-- the end of patronage

-- competing monopolies: booksellers v printers
Whereas printers Booksellers and other persons have of late frequently taken the liberty of printing reprinting and publishing or causing to be printed reprinted and published Books and other writings without the consent of the authors or proprietors ... to their very great detriment. ...

For preventing therefore such practices for the future and for the encouragement of learned men to compose and write useful books ... That from and after the tenth day of April 1710...
"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 ...

"nothing .. to Prohibit the Importation ..."
divided rights

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
a long time coming

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
STATUTE II.
May 31, 1790.

Repealed.
Act of April 29, 1802, ch. 36.
Act of Feb. 15, 1819, ch. 19. Act
of Feb. 3, 1831, ch. 16. June 30,
1834, ch. 157.

Authors of maps, charts
and books;
and purchasers
from them, to
have the sole
right of publica-
tion for 14
years, and the
right of one
week more, after
which the pub-
lisher shall have
the full benefi-
cit: That the
said acts be
confirmed and
continued in
force.

CHAP. XV.—An Act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned. (a)

SECTION 1. Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled, That from
and after the passing of this act, the author and authors of any map,
chart, book or books already printed within these United States, being
a citizen or citizens thereof, or resident within the same, his or their
executors, administrators or assigns, who hath or have not transferred
to any other person the copyright of such map, chart, book or books,
share or shares thereof; and any other person or persons, being a citi-
zen or citizens of these United States, or residents therein, his or their
executors, administrators or assigns, who hath or have purchased or
received in any manner, the copies of any such map, chart, book or books,
Week 11

29 Mar: Technologies of the image

Required reading: