



IP & quality

disentangling the strands

Infosys 218

November 14, 2007



guilt by association?

United States Patent
Doyle , et al.

5,838,906
November 17, 1998

Distributed hypermedia method for automatically invoking external application providing interaction and display of embedded objects within a hypermedia document

Abstract

A system allowing a user of a browser program on a computer connected to an open distributed hypermedia system to access and execute an embedded program object. The program object is embedded into a hypermedia document much like data objects. The user may select the program object from the screen. Once selected the program object executes on the user's (client) computer or may execute on a remote server or additional remote computers in a distributed processing arrangement. After launching the program object, the user is able to interact with the object as the invention provides for ongoing interprocess communication between the application object (program) and the browser program. One application of the embedded program object allows a user to view large and complex multi-dimensional objects from within the browser's window. The user can manipulate a control panel to change the viewpoint used to view the image. The invention allows a program to execute on a remote server or other computers to calculate the viewing transformations and send frame data to the client computer thus providing the user of the client computer with interactive features and allowing the user to have access to greater computing power than may be available at the user's client computer.

Inventors: **Doyle; Michael D.** (Alameda, CA), **Martin; David C.** (San Jose, CA), **Ang; Cheong S.** (Pacifica, CA)

Assignee: **The Regents of the University of California** (Oakland, CA)

Appl. No.: **08/324,443**

Filed: **October 17, 1994**



guilt by association?

United States Patent

4,438,032

Golde , et al.

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.: **06/456,177**

Filed: **January 6, 1983**



mapping the territory

"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

must protect (Helprin)

can't protect (Barlow)



why now?

"ferment ... made inevitable by the rise of the information economy, an economy built on intellectual property"

"granting property rights increases the incentive to create property"

"the problems are not conceptual ... the problems are empirical. They are problems of measurement. ... the empirical problems are acute".

Posner, "Law & Economics of Intellectual Property"



everything you know

"[The Net] resembles the 19th-century American West ... Until the West was fully settled and "civilized" in this century, order was established according to an unwritten Code of the West, which had the fluidity of common law rather than the rigidity of statutes. ... In fact, until the late 18th century this model was applied to much of what is now copyrighted."

-- Barlow



not always wrong

In regard to my own soft product, rock 'n' roll songs, there is no question that the band I write them for, the Grateful Dead, has increased its popularity enormously by giving them away. We have been letting people tape our concerts since the early seventies, but instead of reducing the demand for our product, we are now the largest concert draw in America, a fact that is at least in part attributable to the popularity generated by those tapes.



MUSIC

The New Deal: Band as Brand

band & brand



By **JEFF LEEDS**
Published: November 11, 2007

GEORGE, Wash.

Multimedia

[▶ Jeff Leeds on 360 Deals](#)

[🔍 Enlarge This Image](#)



J. Emilio Flores for The New York Times

The members of Paramore, fronted by Hayley Williams, say a "360" deal has helped them develop as a group.

IF you surveyed the crowd this summer at the punk-flavored Vans Warped Tour here, thick with unexpected piercings and regrettable tattoos, the Paramore fans were hard to miss. Many were clean-cut young girls sporting the same shaggy orange-and-blonde hairstyle as the one worn by the band's singer, Hayley Williams, in the music video for this pop-punk band's hit song, "Misery Business."

"I just want to be just like her," said a 12-year-old fan named Christine, who cried while standing in line to get autographs from Ms. Williams, 18, and her band mates. Ms. Williams cupped a hand over her mouth and spun away for a moment for fear of losing her own composure.

Paramore is undeniably ascendant: after three years of tireless runs through clubs and festivals, the band, from Franklin, Tenn., has built a passionate audience that has snapped up more than 350,000 copies of its recent second album, "Riot!," more than doubling the sales of its debut. And now the band is selling out theaters on its biggest tour to date.

Though its success is in large part due to smart pop songwriting and a fashion-forward frontwoman, music executives and talent managers also cite Paramore as a promising example of a rising new model for developing talent, one in which artists share not just revenue from their album sales but concert, merchandise and other earnings with their label in exchange for more comprehensive career support.

- E-MAIL
- PRINT
- SINGLE PAGE
- REPRINTS
- SAVE
- SHARE

ARTICLE TOOLS
SPONSORED BY

THE SAVAGES



Record labels lose out as bands become brands in fierce market

New roles are emerging for those closest to artists in a fragmented media world

questions of ownership?



Owen Gibson and Katie Allen

The Guardian Monday February 26 2007

The following correction was printed in the Guardian's Corrections and clarifications column, Wednesday February 28 2007

In the original version of this article, we stated that Kanye West is signed to Sony BMG as a recording artist, not his actual label, Universal Music. This has now been amended in the version below.

The upheaval wrought on the music industry in recent years, of which EMI's latest travails are just the latest manifestation, have inspired a change in bedtime reading among senior executives. Their book of choice is now less likely to be a classic tale of rock industry excess such as Hammer of the Gods, but The Long Tail, a book about how the internet has brought about the death of shared culture.

The book, written by Chris Anderson of Wired magazine, sums up the challenges facing established media groups, including leading record labels: "At this point, the artists don't need the labels any more. The consumers don't need the labels any more and I think the labels, rather than trying to protect what business they have, need to ask themselves what is their relevance."



what is *ip*?

intellectual property

industrial property

intangible property

"three complex strands of
jurisprudence --copyright, patent, and
trademark--each with its own sources
in premodern custom and law".

--Hesse



players

"Every change [in IP] tending to advance the producer interest against the consumer"

St. Clair, 2004

creators

distributors

consumers

the consumer has no constituency
--Jessica Litman



players

"Every change [in IP] tending to advance the producer interest against the consumer"

St. Clair, 2004

Last Updated: Tuesday, 9 March, 2004, 17:44 GMT

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EU backs tighter rules on piracy

The European Parliament has passed an anti-piracy law, covering everything from handbags to music downloads.

Under the law, counterfeiters could face civil penalties, but proposals for criminal sanctions were dropped.

Before the vote, critics said the law was flawed as it applied the same penalties to both professional counterfeiters and consumers.

But a late amendment limited them to organised counterfeiters and not people downloading music at home.



A similar US law has led to lawsuits against pop-swappers



players

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The European law was shepherded through the European Parliament by MEP Janelly Fourtou, wife of Jean-Rene Fourtou who is boss of media giant Vivendi Universal.



practicing ip

"we need to take account of the fact that the legal process is itself creative ... registration played an important role in identifying intangible property"

Sherman &
Bentley, 2006

rationalizing

identifying

containing

protecting

philosophical, legal, bureaucratic approaches



classical argument

precedent

"My books need no one to accuse or judge you: the page which is yours stands up against you and says, 'You are a thief [*plagiarius*]'".

--Martial, *Epigrams*



classical refutation

"the primary meaning of *plagiarius* is 'one who illegally slaves another'. The word carries the sense of the improper subjugation of a person who is properly free The "Plagiary" is not criticised for stealing Martial's work, but for asserting ownership over a published piece of literature, thus illegitimately 'enslaving' what rightfully belongs to the public domain. The epigram does not condemn what we know as "plagiarism" but implicitly sanctions it." --David Hawkes



manuscript culture

"open and closed"

"Originality, Imitation, translation, plagiarism ... appear to mean one thing in relation to modern notions of textuality and quite another in relation to medieval and Renaissance thinking".

--Gerald L. Bruns, "The Originality of Texts in Manuscript Culture", 1980



religious injunctions

"Scientia Donum Dei Est
Unde Vendi non Potest"

"Shari'a law ... was used to
prevent the unauthorized
appropriation of the
reputation or authority of a
great teacher".
--Hesse



early days



825: Chinese regulation of almanacs

Taizon's bogus almanacs

1236: Bonafasus' 15-year dyeing privileges

patents and foreign ideas

1421: Brunelleschi's patent

1441: stained-glass patent (Eton)



moving right along



1469: John Speyer, patent, Venice

"intertwining of the privilege system with
censorship" --Rose

1474, Venetian patent law

10 year's privilege for "any new and
ingenious artifice"

1496: Aldus Manutius' patent

1504: William Facques, "King's printer"

1504: Guillaume Cop, Paris University

signed almanac

"le bien et utilité de la chose publicque"



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

and along

1511: Durer's, patent

1518: English printing patent

1527: petition to prevent:

"les faultes et incorrections que
lesditz imprimeurs y pourroient
commetre en son absence"

1557: Stationers' charter

"binders, stitchers, concealers, sellers, publishers
dispersers" & the "English Stock"



statute of monopolies

1623

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**



publishing patents

almanacs
bibles
law
music
prayer books

17th century & civil war

in the country & in the trade

"the old *patentees* and *monopolizers*".

--Milton

"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".

--Milton

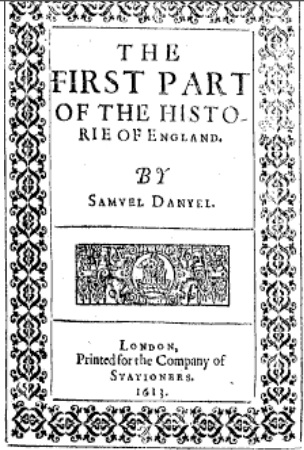


branders & congers

"His NAME at the Bottom of a Title Page, does sufficiently recommend the Book"

"Sometimes 5 *Imprimaturs* are seen together dialogue-wise in the Piatza of one Title page, completing and ducking each to the other with their shav'n reverences, whether the Author, who stands by in perplexity at the foot of his Epistle, shall to the Presse or to the sponge".

--Milton, *Areopagitica*

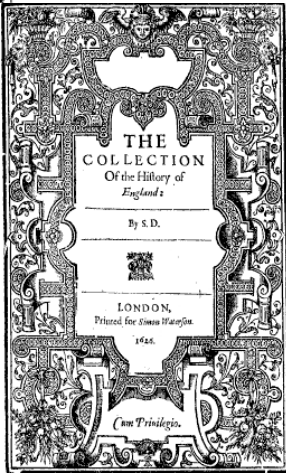
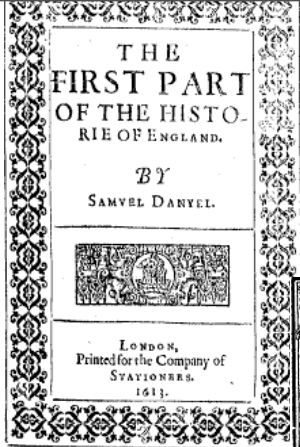


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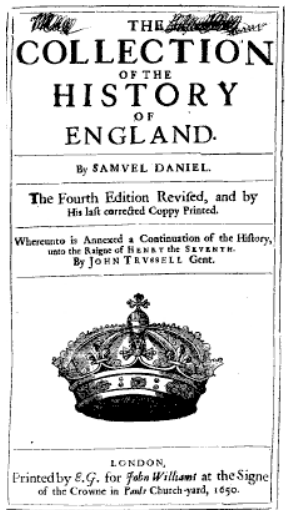
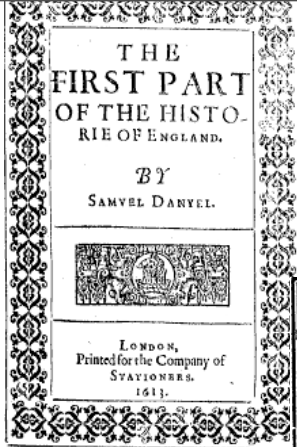
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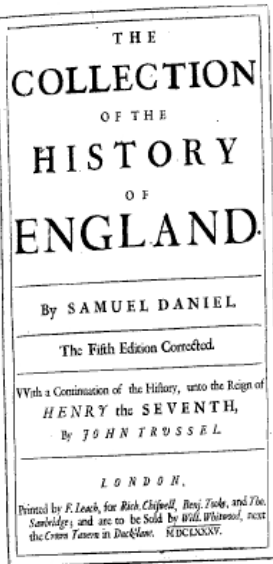
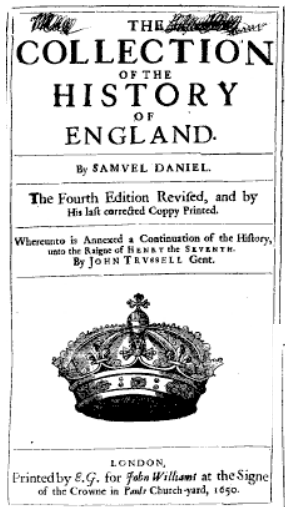
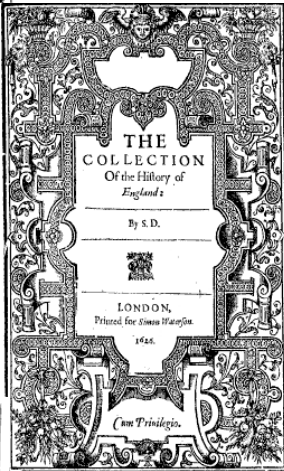
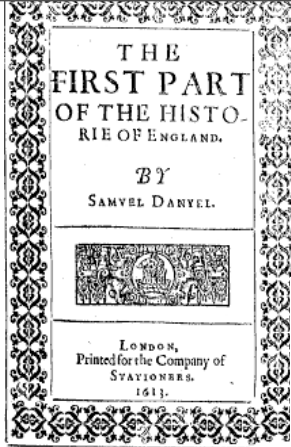


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Locke's limits

"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".
--to Edward Clarke, 1682/3



Locke's property

labour theory of value

"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"
--*Two Treatises of Government*,
1690



new plagiarism

"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*

Anno Octavo

Annæ Reginae.

An Act for the Encouragement of Learning, by Vesting the Copies of Printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned.



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 of such Books and Writings, to their very great Detriment, and too often to the Ruin of them and their Families: For Preventing therefore such Practices for the future, and for the

Encouragement of Learned Men to Compose and Write useful Books: May it please Your Majesty, that it may be Enacted, and be it Enacted by the Queens most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament Assembled, and by the Authority of the same, That from and after the Tenth Day of April, One thousand seven hundred and ten, the

statute of Anne

"An Act for the Encouragement of Learning, by Vesting the Copies of Printed Books in the Author's or Purchasers of Such Copies".

--8 Anne c 19

"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*



tending to quality?

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
--Defoe, *Regulation*



fighting corruption

[new books are] immediately abrig'd by
some mercenary Bookseller, employing a
Hackney-writer

... no Man has a Right to make any
Abridgment of a Book, but the Proprietor
of the Book; and I am sure no Man can be
so well qualified for the doing it, as the
Author

the printing of other Mens Copies ... as
unjust as lying with their Wives

--Defoe, *Regulation*



quality myth?

"the founding myth ... that textual integrity and regulated intellectual property are somehow mutually entailed".

Joseph Loewenstein, *The Author's Due*, 2002

"The unrestrained *Press* gives a kind of *Imprimatur* to every thing that comes from it ... a publick *Note of Distinction*."

Defoe, *Restraint upon the Press*



everything you know about history ...

"[The Net] resembles the 19th-century American West ... Until the West was fully settled and "civilized" in this century, order was established according to an unwritten Code of the West, which had the fluidity of common law rather than the rigidity of statutes. ... In fact, until the late 18th century this model was applied to much of what is now copyrighted."

-- Barlow



business as usual

Halprin's predecessors

booksellers' claim common law,
eternal rights in copy
supersedes statutory law

brand name productions

Pope's Shakespeare
Johnson's Poets



parsing property

"Obscene with
filth the
Miscreant lies
bewray'd"

Pope, *Dunciad*

"one of the new
terrors of
Death"

Arbuthnot to
Swift, 1733

1741: Pope v. Curl

"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".

Hardwicke. LC



THE
HUMBLE REPRESENTATION
OF
EDMUND CURLL,
Bookseller and Citizen of London,
Concerning FIVE BOOKS,
*complained of to the Secretary
of State.*

I.



TREATISE of the Use of
FLOGGING in Physical
and Venereal Affairs: Also
of the Office of the *Loins*
and *Reins*. Written to the
famous *Christianus Cassius*, Bi-
shop of *Unbeck*, and Privy-Councillor to
the Duke of *Holstein*, by *John Henry Mei-
bomius*, M. D. Made *Englisb* from the
A Latin



real property?

Blackstone's rules for acquisition

descent, purchase, escheat, occupancy,
prescription, forfeiture, alienation

occupatio, for property res nullius
--Justinian



more parsing

metaphysics vs utility

"There seems (said he,) to be in authours 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



conservatism of the rural mind

"The rural mind is unlikely to have suddenly become conservative in 1600 and ceased to be conservative within a few years of 1774 ... The freezing of the popular canon after 1600. ... With books on medicine, too, ... older texts continued to be reprinted and sold, sometimes with paratextual guarantees ... it is neither fair nor convincing to blame the poor for their ignorance ... knowledge which was mainstream and modern at various times before, was frozen in 1600.

--St Clair, *The Reading Nation*



holding property

'So abstruse and chimerical in its nature ... beyond the comprehension of man's understanding and hardly capable of being defined'

Thurlow, A.G.

printing makes property?

"the sentiments and doctrine may be called ideal, yet when the same are communicated to the sight and understanding of every many by the medium of printing, the work becomes a distinguishable subject of property"--Aston, J

or gives it away?

[publication]"virtually and necessarily a gift to the public ...[the work] immediately and unavoidably becomes common ... owner of a piece of land lays it open into a highway"

--Yates, J
Qofl07 - IP - 36



"What oft was thought but ne'er so well expressed"

--Pope

defining by style

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

Swift, 1721

"Manner of
writing with
regard to
language"

Johnson,
Dictionary

transcendent properties

"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



against style

"When we run over libraries, persuaded of these principles, what havoc must we make? If we take in our hand any volume; of divinity or school metaphysics, for instance; let us ask, *Does it contain any abstract reasoning concerning quantity or number?* No. *Does it contain any experimental reasoning concerning matter of fact and existence?* No. Commit it then to the flames: For it can contain nothing but sophistry and illusion."

--Hume, *Enquiries concerning human understanding*, 1777

"the ideal ... would be to strip each article or each chapter in a book of whatever is a matter of fine language or repetition or padding and to collect separately on cards whatever is new and adds to knowledge."--Paul Otlet



Anne affirmed

1774 Donaldson v Becket

booksellers defeated

arguing from utility and consequences

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

--Lord Camden



alternative strategies

quality editions



"... pirating Books in smaller Print, and meaner Paper" --Defoe



copyright window

the author empowered

"[1774] transferred a huge quantum of purchasing power from book publishers to book buyers. ... The 1842 Copyright Act produced a reciprocal effect ... texts which were just about to enter the public domain were converted into valuable windfall assets".

St Clair, *The Reading Nation*

ADVERTISEMENT.

1. *Chevalier Faublas, with six elegant Amatory Engravings, 4 vols. royal 18 mo.. 1l. 4s.*

2. *Irish Melodies, by Thomas Moore, Esq. 2s. 6d.*

3. *The Giaour, by Lord Byron, 2s. 6d.*

4. *The Hebrew Melodies, by Lord Byron, 1s.*

5. *Don Juan, the 14 Cantos, 4s. 6d.*

6. *Queen Mab, by Shelly, 5s.*

7. *The Poetical Works of the late Thomas Little, Esq. 17th edition. 2s. 6d.*

8. *Loves of the Angels, by Thomas Moore. 2s. 6d.*

9. *The Two Visions of Judgment, 1s. 6d.*

10. *The Bride of Abydos, 1s. 6d.*

11. *Parisina, 1s.*

12. *Stoige of Corinth, 1s.*

13. *Corsair, 2s.*

14. *La Vie d'une Femme de la Plaisir, ditto, 1l. 1s.*

15. *La Musæ d'un Voluptuaire ou L'Histoire et le Aventures du Chevalier Henri Loveall, en Angleterre, Irlande et Galles, ditto, 1l. 10s. 6d.*

16. *Terese Philosophe, in English, with twenty most superb and fascinating plates, 1l. 11s. 6d.*

license & liberty

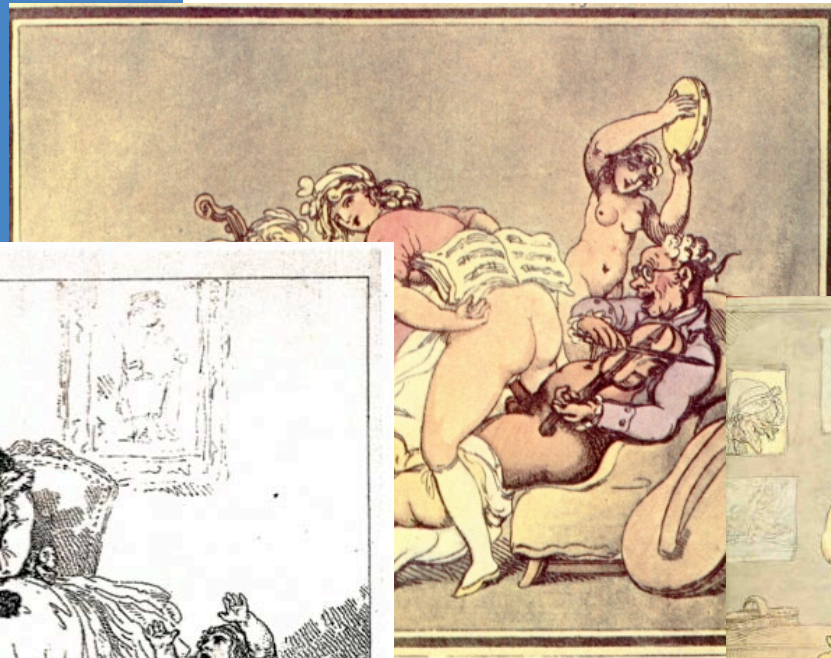
radical underworld
Dugdale



Queen Caroline's divorce
Rowlandson
Gillray
Cruikshank



pornography & politics



Guard we but our own hearts: with constant view
 To ancient morals, ancient manners true,
 True to their manlier virtues, such as nerved
 Our father's breasts, and this proud Isle preserved
 For many a rugged age:---and scorn the while,---
 Each philosophic atheist's specious guile---
 The soft seductions, the refinements nice,
 Of gay morality, and easy vice.

George Canning

'new morality'



NEW MORALITY; or The promised Installment of the High-Priest of the T. EOPHILANTHROPES, with the Homage of Leviathan and his Suite.

Behold!
 The Divine LAMA, Sovereign Priest
 LE PAUX - whom Atheists worship - at whose nod
 Bow their mad heads - the Men without a God!
 - Ere long perhaps in this accursed Isle
 From the Shores of subjugated Nile
 Shall BUONAPARTE'S victor Phœnix
 In grand Theop. philanthropic Sect

The Sect of MARAT, MIRABEAU, VOLTAIRE,
 Led by their Pontiff, good LA-REVELLERE.
 Rejoice our CLUBS shall greet him, and install
 The holy Hunch back in thy Dome, S' PAUL,
 While countless votaries thronging in his train
 Wave their Red Caps, and hymn this sacred strain:
 "Comers and Stars, Seditious Evening Host,
 'Twas Morning Chronicle, and Morning Post.

Whether ye make the Rights of Man your theme,
 Your Country libel, and your God blasphemy,
 Or dirt on private worth, and you the worst:
 Still blasphemous and blackguard praise LE PAUX!
 - And ye five other wandering B or that move
 In sweet accord of harmony and love
 C... and S... L... and Co.
 Tune all your mystic harps to praise LE PAUX!

PR... and W... humble holy men,
 Give praises to his name, with tongue and pen!
 TH... and ye that Lecture as ye go
 And for your pains get Paid, praise LE PAUX!
 Praise him, each Jacobin, or Foot, or Knave,
 And your crooked heads in sign of worship wave!
 - All creeping creatures, worms and low,
 PAINT, W. CL. MS. G. DR. S. H. C. FT. praise LE PAUX!

And thou LEVIATHAN! on Ocean's brim
 Hugest of living things that sleep & swim;
 Thou in whose nose by BURKE'S gigantic hand
 The hook was fixed to drag thee to the land
 With... and... in thy train,
 And W... wallowing in the Vasty main,
 Still as ye sport, and puff, and spout, and blow,
 In puffing, and in spouting, praise LE PAUX!

Published August 1st 1798 by J. Wright, No. 15, Piccadilly, for the Anti-Jacobin Magazine & Review.

J. Gilbert sculp.



19th century: copyright stabilizes

copyright stabilizes & internationalizes

"vile French pirates"
--Wordsworth

1842 copyright act

1844: "The British government is empowered
by parliament to make reciprocal
copyright treaties with foreign states.

Between 1846 and 1886 sixteen treaties
are concluded with foreign governments".

--St Clair



contradictions

pragmatism:

developing nations and public interest

Dickens, 1842

Funk

Twain

idealism?

France, Hugo, droit d'auteur



19th century: patents wobble

"SGDG"

'sans garantie du Gouvernement'

'je voudrais que les mots de patente et brevet fussent complètement effacés de nos lois car ces mots jettent dans le public un certain effroi, emportent malgré tout l'idée d'une certaine garantie et font froire à des droits qui n'existent pas'

1878

and become unpopular



"the problems are not conceptual ... the problems
are empirical. They are problems of
measurement. ... the empirical problems are acute"
--Posner

how useful?

patents vs copyrights

"American institutions during the nineteenth century ... encouraged the participation of a broad spectrum of the population, and succeeded in motivating relatively ordinary men and women to dramatically expand the existing stock of technical and cultural inventions".

"the virtuous circle of democracy and
technology" [leading to]
"industrial and cultural supremacy."
--B. Zorina Khan

"I find no evidence ... that ... strong patent laws increase levels of innovative activity". ---Petra Moser



July 15, 2007

PROTOTYPE

A Patent Is Worth Having, Right? Well, Maybe Not

By MICHAEL FITZGERALD

PATENTS are supposed to give inventors an incentive to create things that spur economic growth. For some companies, especially in the pharmaceutical business, patents do just that by allowing them to pull in billions in profits from brand-name, blockbuster drugs. But for most public companies, patents don't pay off, say a couple of researchers who have crunched the numbers.

The two researchers have analyzed data from 1976 to 1999, the most recent year with complete data. They found that starting in the late 1990s, publicly traded companies saw patent litigation costs outstrip patent profits. Specifically, they estimate that about \$8.4 billion in global profits came directly from patents held by publicly traded United States companies in 1997, rising to about \$9.3 billion in 1999, with two-thirds of the profits going to chemical and pharmaceutical companies. Domestic litigation costs alone, meanwhile, soared to \$16 billion in 1999 from \$8 billion in 1997.

Things have probably become worse since then. For instance, patent litigation is up: there were 2,318 patent-related suits in 1999, and 2,830 in fiscal 2006 (though that's down from the peak year, 2004, when 3,075 were filed). Mr. Bessen said awards in patent cases also seemed to be up, though he was less confident in that data. Worse, he says, companies doing the most research and development are sued the most.



path dependency

"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".



the missing leg?

trademarks

France, 1824, 1857
England, 1862, 1875
US, 1870, 1881, 1905

French viral treaties

England, 1860
US, 1869

the progress clause

is it intellectual?
is it an invention?
is it progressive?



why now?

"The astronomical growth in the wealth and cultural influence of multinational corporations over the last fifteen years can arguably be traced back to a single, seemingly innocuous idea ... that successful corporations must primarily produce brands, as opposed to products?"

--Klein, *No Logo*

"the consumer dictates to the companies ... simplify choice, guarantee quality ...ultimate accountable institution"

--*Economist* (review of *No Logo*)



fast forward



fast forward





fast forward





fast forward





fast forward





brands in chains

the magic of supply chains

autonomy: rise of small business, complex
adaptive/self-organizing ...

dispersal: global supply chain

coordination: J-i-T



panglossian view

"the benefits of vertical integration
without the deficits" --Fruin, 1992

"Virtual integration"-- Dell

"frictionless markets" --Gates, 2000

"PC chain's primary nexus ... the market
... the price system"
--Langlois, 1992

"platform leadership" --Gawer & Cusamano, 2002

"networked society" --Castells, 2002



meritocracy

disk drives

"among the most valuable and technologically
dynamic components of the PC"
McKendrick, 2004



meritocracy

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"among the most valuable and technologically
dynamic components of the PC"
McKendrick, 2004

2000



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196 million disks



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8 companies



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W. Digital -19%



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Dell 7%

Maxtor 0.07%

Intel 13%

W. Digital -19%

Microsoft 31%



meritocracy

"Microsoft & Intel capture as much profit as all the other firms in the PC industry".
--Kenney

disk drives

"among the most valuable and technologically dynamic components of the PC"
McKendrick, 2004

2000

196 million disks
8 companies
0 profits

Quantum 2%

Dell 7%

Maxtor 0.07%

Intel 13%

W. Digital -19%

Microsoft 31%



disintermediation

supply chains

URGES FEDERAL AID IN RAILWAYS' PLIGHT	1917
James Speyer Tells Chamber of Commerce Time Is Ripe for Effective Relief.	1942
ASSAILS VIEW OF CONGRESS	1951
Irving T. Bush Pleads for Compe- tent Central Authority to Regulate Terminals.	1966



books to wine

the “disestablishment” of Port

1703 Methuen treaty

1713 defeat of “Commercial Treaty”

1756 demarcation

1802, 75% of wine market

1834, collapse of regulation

1860, retailing transformation

1862, English TM law

Epicures themselves in the choice of Wines, do oftentimes desire the Skillfull to Taste these Liquors for them, and relye more on the Palates of Others than their own. --Robert Boyle

wine quality

"The wines you mentioned could only at present be fit to put in the bottle not to use. We therefore persuade ourselves that the judgement found was premature We therefore request of you to suspend your opinion until they have had more time to mature."

1793

Qofl07 - IP - 59





rottenest set

"Infinite Frauds and Cheats of the Wine-Trade will be discover'd, and I hope for the future, prevented; for if once we can come to a usage of drinking our Wines neat as they come from the Country where they grow, all the vile Practices of Brewing and Mixing Wines, either by the Vintners or Merchants, will die of Course."

--Defoe





who stands up
for quality?

SUPERIOR WINES.—SPENCER & PERKINS,
No. 115, Newgate-street, Importers of Wine for upwards
of 40 years, 16 of which they have adopted that admirable
mode of meliorating in large vats of 3 and 4000 gallons con-
tents, as is practised in Germany and other places abroad; by
which their Wines are so improved in flavour, and their cor-
dial qualities retained, that they are not only a delicious li-
quor to the palate, but grateful to the stomachs of nervous ha-
bits, and the aged and infirm. Their stock of Old Port, Ma-
doira, Buccella, &c. is of 15,000l. value, by which they are
enabled to keep Wine to great ages, both in cask and bottle.
They also keep a large stock of Cogniac Brandy, Pine and Ja-
maica Rum, and East India Orange Shrub, the oldest in Lon-
don, treated in the same manner in vats, which, with their
Wines, they sell on the most moderate terms, for ready-mo-
ney. Not less than a dozen sent to any part of the Town free
of expence.

who stands up
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Wines, they sell on the u
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of expence.

who stands up
for quality?

PORT.—Crown Seixo, 1851 vintage, bottled in 1853.
—About 200 dozen of this very fine OLD WINE to be SOLD, in
parcels of three dozens, at 53s. per dozen, hampers included. Apply
to **NORGATE and SON**, 55, Ludgate-hill, London.

PURE UNBRANDIED FOREIGN WINES.—
PRICE LIST of all WINES and SPIRITS sent post free on
application to **ABBOTT, ASH, and Co.**, 16, Northumberland-street,
Charing-cross, W.C. Agents Wanted.

WARDS' PALE SHERRY, at 36s. per dozen, fit for
a gentleman's table, bottles and cases included. Terms cash.
Post orders on Piccadilly. Samples sent free of charge.—**Chas. Ward and
Son** (established upwards of a century), 1, Chapel-street west, Mayfair.

SUPERIOR WINES.—SPENCER & PERKINS,
 No. 115, Newgate-street, Importers of Wine for upwards
 of 40 years, 16 of which they have adopted that admirable
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 a gentleman's table, bottles and cases included. Terms cash.
 Post orders on Pic
 Son (established up

OLD BEFSWING PORT (Sandeman's shipping),
 48s. per dozen. Gordon's golden and pale Sherries, 30s., 36s., and
 4s.; Manzanilla and Amontillado, highly recommended for invalids,
 48s. and 60s.; old Port, 26s., 42s., and 48s.; white Port, very select
 60s.; St. Julien Claret, 50s.; St. Estéphe, 36s.; La Rose, 42s.; Leoville
 and Latour, 43s., 51s.; Margaux, 60s.; Ladtte, 72s.; Chablis, 36s.;
 Hauterac, 48s.; Heck and Mowelle, 36s. and 48s.; sparkling ditto, 60s.,
 72s., and 84s.; Ruedelheimer, Steimberger, Johannesberger, and Lieb-
 frauwlich, 60s.; sparkling Champagne, 48s., 60s., and 72s.; fine old
 Sack, Malmsey, Frontignac, Constantia, Tokay, Vermuth, and other
 rare wines. Old pale cognac brandy, 66s. per dozen; curaçoa, mara-
 ichino, noyau, cherry brandy, and other foreign liqueurs. On receipt
 of a post-office order or reference, any quantity, with a priced list of all
 other wines, will be immediately forwarded by **HEDGES and BUT-
 LER**, wine merchants, &c., 155, Regent-street, London; and 30, King's-
 road, Brighton.



precedent setting

trademark cases in common law: product classes with most reported cases

Class	Number
Medical preparations	46
Beer, wines, spirits	42
Newspapers & publications	38
Tobacco	16
Sauces	13
Iron	12



precedent setting

globally, most litigious plaintiffs

Name	Number
Hennessy	6
Wolfe	5
Apollinaris	4
Moet	3
Guinness	2
Bass	2



precedent setting

England, most litigious

Name	Number
Guinness	12
Hennessy	11
Bass	6
Clicquot	3
Martell	3
Moet	3



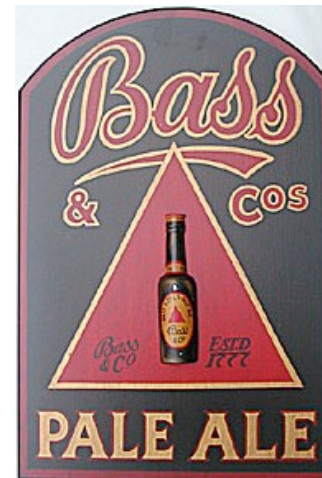
direction

60 cases involving alcoholic beverages
7 are horizontal competition

the majority of defendants
are along the chain
bottlers, printers
engravers, retailers



power of brands



dividing the territory

"Bass will make no objection ..."



Apollinaris

PUBLIC NOTICES.

APPOLOGY.
 Athlone, 13th August, 1906.
 TO
MESSES. A. GUINNESS, SON, and CO., LTD.,
 St. James's Gate Brewery,
 Dublin.
 GENTLEMEN,
 I tender to you my unqualified Apology for having sold as your Extra Stout your Porter, which was labelled as "Extra Stout," and I undertake in future to accurately label all Beer sold by me, and to adopt all steps which shall render impossible a recurrence of the matters complained of by you.
 I give you authority to make such use as you may think necessary of this Apology.
 Dated this 13th day of August, 1906.
 (Signature) W. R. FETHERSTON.
 Witness to the above Signature:
 JAMES J. COEN.

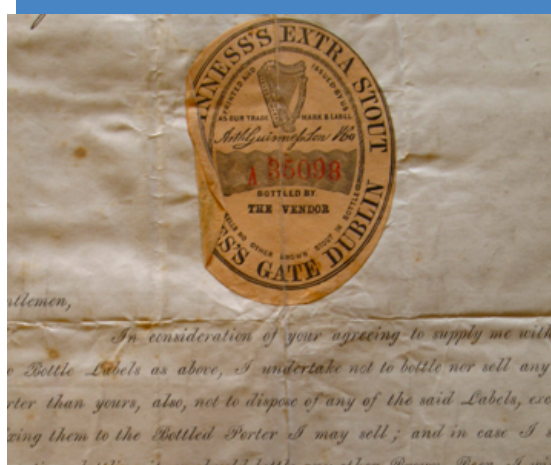
ISLE OF MAN BOTTLERS' ASSOCIATION,
 CHURCH STREET, DOUGLAS, ISLE OF MAN,
 JANUARY 30TH, 1896.

Guinness Monopoly.

The Result of selling Guinness' Stout under Guinness' own Label, and how it has affected Bottlers in the Isle of Man.

supply-chain struggles

bottlers, printers, retailers Guinness & San Francisco, 1899



Star Bottling Works	Stanyan & Waller sts	Schomaker bros	4th & Bryant
McGraw bros	401 or 418 Devisadero St	Alper Bros	5th & Clara
Schults, H.A.	Post & Larkin Sts	Wolking & Co, H.	565 Fourth St
Schranz & Waizman	601 Baker st, cor McAllister	Serris, J.	4th & Howard
Schroder, H	220 California St	Pontag	138 Fifth St
Francis, S.	430 6th St	Bennett & Witmer	Cor. Ellis & Stockton Sts
Puvogal, Jno	36 6th St	E&G Gold Rule Bazar	Market Bet 4th & 5th st
Zanganelli	6 Mason St	Edlef Atzroth	336 Fift Street
Grocer , Name Unkonw	267-269 Third St	Riechers, F.W.	601 Larkin St
ditto	121 Third Street	Family Liquor Store	871 Larkin St
Tweedie, Daniel	408 Eight St	Shamrock Saloon	923 Howard
Burnell	408 Battery	Miesner, Peter	Cor. Ellis and Taylor St
		Kruse, Fred	1120 Third St



supply chain struggles

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, 1985, Wendell gets 5 months hard labour



more chains

Colman in New York

"excitement among grocers"



MUSTARD POTS.

The Bull's Head Label - Excitement Among the Grocers - Meeting of the Board of Trade - Wholesale Lowenite 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. COLEMAN, of England, through their agents and attorneys, YVAIN & HICKRY, to recover damages arising from alleged infringements of trade-marks. F. B. THURMAN was called to the chair, and S. H. KINER elected 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 above-named English firm had begun an action at law against SAMUEL CHUMP, a label manufacturer, doing business in New-York, for manufacturing mustard labels bearing a bull's-head, which is seen to claim as a trade-mark. During the progress of the suit a report was published that the attorneys for the aforesaid firm had prepared a large number of suits against manufacturers, dealers and grocers for selling cans of mustard bearing a bull's-head, which suits would be prosecuted if the action against CHUMP was decided in their favor. As the device of a bull's-head had been in use in this country for many years in connection with the manufacture and sale of mustard, and the firm had had



stretching the chain

	Software	IBM
	OS	IBM
	CPU	IBM
	Hardware	<u>IBM</u>

386
vertical integration

virtual monopoly

quality assurance

"nobody ever lost their job
for buying IBM"



stretching the chain

	Software	IBM
	OS	IBM
	CPU	IBM
	Hardware	<u>IBM</u>



stretching the chain

	Software	IBM	DEC (Unix)
	OS	IBM	DEC/VAX (3BSD-Unix)
	CPU	IBM	DEC/CVAX
	Hardware	<u>IBM</u>	<u>DEC</u>



stretching the chain

Software	IBM	DEC (Unix)	3d party
OS	IBM	DEC/VAX (3BSD-Unix)	Apple
CPU	IBM	DEC/CVAX	Apple/ Motorola
Hardware	<u>IBM</u>	<u>DEC</u>	<u>Apple</u>



stretching the chain

Software	IBM	DEC (Unix)	3d party	3d party
OS	IBM	DEC/VAX (3BSD-Unix)	Apple	Sun/Solaris (AT&T-Unix)
CPU	IBM	DEC/CVAX	Apple/ Motorola	Sun/SPARC
Hardware	<u>IBM</u>	<u>DEC</u>	<u>Apple</u>	<u>Sun</u>



stretching the chain

Software	IBM	DEC (Unix)	3d party	3d party	3d party
OS	IBM	DEC/VAX (3BSD-Unix)	Apple	Sun/Solaris (AT&T-Unix)	IBM [Msoft]
CPU	IBM	DEC/CVAX	Apple/ Motorola	Sun/SPARC	<small>BIOS</small> IBM [Intel]
Hardware	<u>IBM</u>	<u>DEC</u>	<u>Apple</u>	<u>Sun</u>	IBM



stretching the chain

Software	IBM	DEC (Unix)	3d party	3d party	3d party
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Hardware	<u>IBM</u>	<u>DEC</u>	<u>Apple</u>	<u>Sun</u>	IBM



stretching the chain

Software	IBM	DEC (Unix)	3d party	3d party	3d party
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CPU	IBM	DEC/CVAX	Apple/ Motorola	Sun/SPARC	<small>BIOS</small> IBM [Intel]
Hardware	<u>IBM</u>	<u>DEC</u>	<u>Apple</u>	<u>Sun</u>	IBM

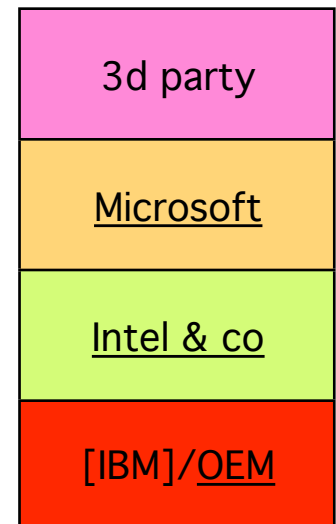


goodbye to all that

the loss of assurance

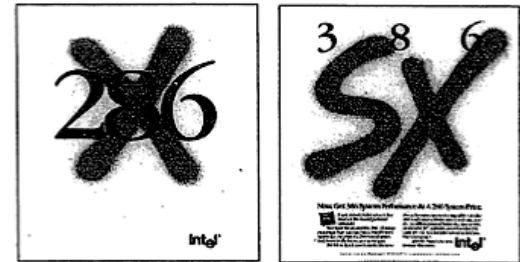
rise of the clones

"the PC"





vertical competition



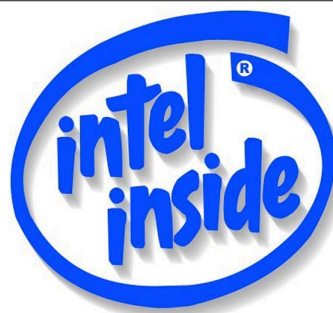
386 &

"the accidental brand"

"trash marketing" (AMD)

"promoting the semiconductor company at the expense of Compaq's brand"

"established a mindset in computer users that they were, in fact, Intel's customers, even though they didn't actually buy anything from us."



vertical competition



386 &

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cooperation to "direction"

"PC chain's primary nexus ... the market
... the price system" -Langlois, 1992

"The relationship between Dell and SLCs [supplier
logistic centers] is far from what would qualify
as a market transaction between independent
players" --Fields, 2004

"Firms are not islands, but are linked together in
patterns of co-operation and affiliation **Co-
operation may come close to direction when one of
the parties is clearly predominant**" --Richardson, 1972



recent chains

CBCnews

TECHNOLOGY

Story Tools: E-MAIL | PRINT | Text Size: S M L XL | REPORT TYPO | SEND YOUR COMMENT

'Craplets' could damage Vista launch: Microsoft exec

Last Updated: Wednesday, January 10, 2007 | 6:38 PM ET

[CBC News](#)

A senior Microsoft Corp. executive says the company is concerned that uncertified third-party software loaded onto new computers by manufacturers could hurt the launch of consumer versions of its Windows Vista operating system later this month.

In a discussion Tuesday night at the Consumer Electronics Show in Las Vegas, the Microsoft official told CBC News Online, on condition of anonymity, that the world's largest software maker is frustrated by legal shackles that prevent the company from restricting what kinds of software major computer makers install on new PCs.

"We can't do anything about it because it would be illegal," the executive said in reference to restrictions placed on the company following a U.S. federal anti-trust lawsuit against the company.



recent chains

CBCnews

TECHNOLOGY

Story Tools: E-MAIL | PRINT | Text Size: S M L XL | REPORT TYPO | SEND YC

'Craplets' could damage Vista launch: |

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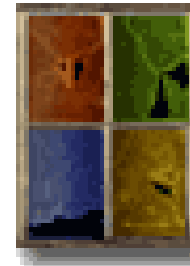
[CBC News](#)

Software Missing From Vista's "Official Apps"

Posted by [Zonk](#) on Thursday February 22, @03:27PM
from the [big-holes](#) dept.

[PetManimal](#) writes

"Microsoft has just released a [list of 800 applications](#) it says are 'officially supported' on Windows Vista. What's special about this list, however, are [the programs that are not included](#): 'Popular Windows software that is





struggles in the chain

Steve Jobs Announces iPhone SDK

Posted by [Zonk](#) on Wednesday October 17, @12:50PM
from the [independent-thought-coming-soon-to-a-phone-near-you](#) dept.

An anonymous reader writes

"It finally happened. Steve Jobs [announced an iPhone SDK](#) today. The plan is to release it in February, and the suggestion is that apps will need to be digitally signed (not unlike digital signing in Leopard). Here's hoping that developing for the iPhone/iTouch will be cheap (or free) enough to allow the folks who have been writing apps to continue doing so. Says Jobs: 'It will take until February to release an SDK because we're trying to do two diametrically opposed things at once--provide an advanced and open platform to developers while at the same time protect iPhone users from viruses, malware, privacy attacks, etc. This is no easy task.'"



[apple](#), [programming](#), [communications](#), [handheld](#), [shorttime](#), [stepping](#), [hotel](#)



vertical vaporware?

Ballmer Calls Android a "Press Release"

Posted by kdawson on Thursday November 08, @08:34AM
from the ~~laugh-while-you-can~~ dept.

Bergkamp10 writes

"Microsoft CEO Steve Ballmer tried to shoot down [Google's new mobile platform](#) at a press conference in Tokyo. Ballmer called Android [a mere 'press release'](#) at present, and said the mobile platform market is 'Microsoft's world.' Ballmer dodged requests to comment on specifics of the Android software platform, preferring instead to highlight the successes of the Windows Mobile platform which he said is on 150 different handsets and is available from over 100 different mobile operators. 'Well of course their efforts are just some words on paper right now, it's hard to do a very clear comparison [with Windows Mobile],' Ballmer said. 'Right now they have a press release, we have many, many millions of customers, great software, many hardware devices and they're welcome in our world,' he added."





not just corporations



not just corporations



not just corporations

Linux.com

The Enterprise Linux Resource

<http://enterprise.linux.com/>

Title Behind the Debian and Mozilla dispute over use of Firefox

Date 2006.10.10 15:01

Author StoneLion

Topic

<http://enterprise.linux.com/article.pl?sid=06/10/09/1434251>

Debian plans to release its newest version, Etch, in December, and wants Mozilla's Firefox Web browser to be part of the distribution. Mozilla, however, [told](#) Debian it couldn't release the software without its accompanying artwork. Now a legal expert says that the existing distinctions between copyright and trademark laws should have prevented this from becoming an issue in the first place.

Larry Rosen, an attorney specializing in intellectual property protection and former general counsel for the Open Source Initiative, told NewsForge, "An open source copyright license can permit you to make any changes you want to certain software, or to make no changes at all. But a trademark license may also be needed before you can apply the original author's trademarks to those changed or original works.

"I don't think that this should be a debate. We merely have to understand that copyright and trademark involve entirely different rights. A license to one of those isn't necessarily a license to the other."

When Trust in an Expert Is Unwise

By DAVID LEONHARDT

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A few years ago, an economics graduate student named [Henry Schneider](#) drove his dad's old Subaru station wagon up to Montreal. He had heard about a Canadian consumer interest group that had done undercover investigations of auto-repair shops, and he wanted to try a more academic version of its experiment.

making lemons

"There is an incentive for sellers to market
poor quality merchandise ...

The difficulty of distinguishing good
quality from bad is inherent in the business
world.

...Gresham's law has made a modified
reappearance.

George Akerlof, "The Market for Lemons:
Quality, Uncertainty, and the Market
Mechanism," 1970



reputation

"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., even the Nobel Prize, ... education and labor markets themselves have their own 'brand names'".

--Akerlof



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last words

as our society changes

What are the modes of existence of this
discourse?

Where has it been used, how can it
circulate, and

who can appropriate it

. . . What difference does it make who
is speaking?