

# information as property

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

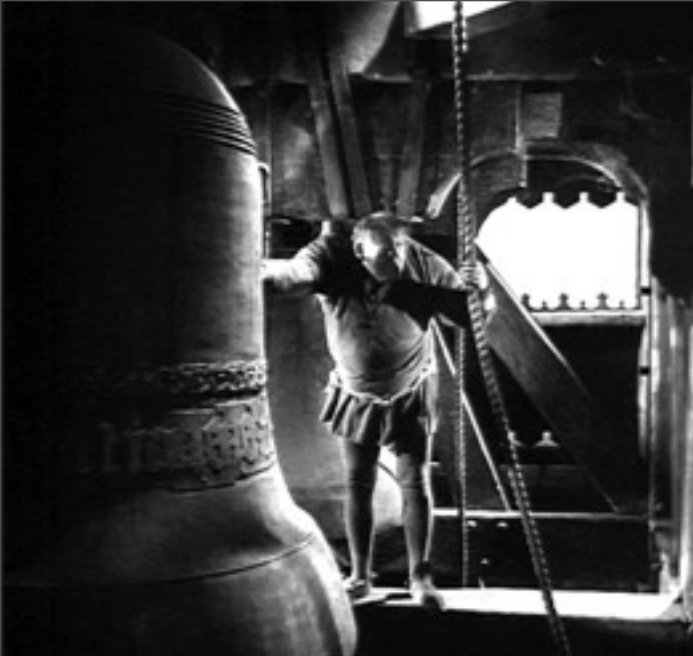
Encouragement of Learned Men to Compose and Write useful Books: May it please Your Majesty, that it may be Enacted, and be it Enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament Assembled, and by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

## History of Information

April 2, 2013







aob

## while we were away

NOTRE-DAME DE PARIS - 850 ANS

Dans le cadre de son 850<sup>e</sup> anniversaire, la **cathédrale Notre-Dame de Paris** fera sonner ses **nouvelles cloches** pour la première fois-pour la solennité des Rameaux qui ouvre la Semaine Sainte, le **samedi 23 mars 2013 à 17h**. La veille du 850<sup>e</sup> anniversaire de la pose de la première pierre par le pape Alexandre III le 24 mars 1163









# Google gets ungoogleable off Sweden's new word list

By Sean Fanning  
BBC News

current business

Objections from Google have forced the removal of the word "ungoogleable" from a list of new Swedish words, the Language Council of Sweden says.

The language watchdog defines "ungoogleable", or "ogooglebar" in Swedish, as something that cannot be found with any search engine.

But Google wanted the meaning to relate only to Google searches, according to the council.

## Lindt loses Easter bunny battle

Swiss chocolatier loses legal fight to stop German rival Riegelein Confiserie selling similar gold foil-wrapped bunny

Reuters in Zurich  
[guardian.co.uk](http://guardian.co.uk), Thursday 28 March 2013 12.41 EDT





# Aereo Wins a Court Battle, Dismaying Broadcasters

By BRIAN STELTER  
Published: April 1, 2013

AEREO challenges one of the most basic tenets of the television business. Broadcasters have been trying to sue it out of existence for a year. But after suffering a big setback on Monday, the broadcast world may have to learn to live with it.

[Enlarge This Image](#)



Kirsten Luce for The New York Times

The founder of Aereo, Chet Kanojia, left, in 2012 with the company's chief technology officer, Joseph Lipowski, in a Brooklyn warehouse that hosts miniature antennas, each belonging to an Aereo subscriber.

A federal appeals court in New York on Monday upheld a ruling in favor of Aereo, the start-up Internet service that streams stations without compensating them. The decision set the stage for a full-blown trial.

The broadcasters, surprised and disappointed, were confident they would prevail eventually. If legal battles continue, Aereo, for now available in New York City, plans to offer its service in nearly two more cities this year.

[FACEBOOK](#)

[TWITTER](#)

[GOOGLE+](#)

[SAVE](#)

[E-MAIL](#)

[SHARE](#)

[PRINT](#)

[REPRINTS](#)

## more current yet

## A Setback for Resellers of Digital Products

By BEN SISARIO  
Published: April 1, 2013

A federal judge in New York has dealt a blow to the nascent business of reselling digital goods like music and e-books, ruling that a small company's secondary market for digital music infringes on the copyrights controlled by record companies.

[Enlarge This Image](#)



The company, [ReDigi](#), opened an [online platform](#) in late 2011 that allowed people to upload and resell songs they had bought from online retailers like Apple's iTunes. ReDigi said its technology deleted the original file once a copy was put up for sale, but the major record labels were skeptical. Records sued in early 2012.



CHAP. CXXIX.—An Act concerning Trade Marks and Names.

[Approved April 3, 1863.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

historical issues?

year

2015

1980

1950

1900

1800

1700

1600

1200

600

400

0

500

3000

5000

30,000

50,000

week

1

2

3

4

5

6

7

8

10

11

12

13

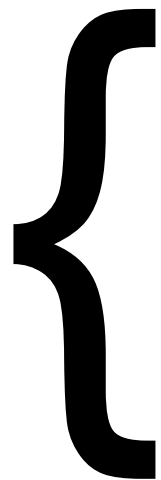
14

15

week

6

2



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)



Annæ Regina.

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.

# intellectual, industrial informational?

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" 'intellectual  
property' .. not  
used to refer to  
patents,  
copyrights, trade  
secrets, and  
trademarks  
collectively until  
the middle of the  
20th century"  
--Catherine Fiske,  
*Working Knowledge*

**copyright**

**patent**

**trademark**

intellectual property (c. 1820)

industrial property/propriété industrielle

droit d'auteur



Edward Young  
1683?–1765

CONJECTURES  
ON  
ORIGINAL COMPOSITION.  
IN A  
LETTER  
TO THE  
AUTHOR  
OF  
Sir CHARLES GRANDISON.

*Si habet aliquod tanquam pabulum studii, & doctrinae,  
etiam fenestrate nihil est jucundius.* Cic.

L O N D O N :

Printed for A. MILLAR, in The Strand; and

# stuck in the past?

## the 'author paradigm'

"the discourse of entitlement in an information society will draw on images of information that were produced in a society where information bore a very different relationship to technology, to power to wealth, ... we are driven to confer property rights in information on those who come closest to the image of the romantic author"

-- James Boyle,

*Shamans, Software, & Spleen*, 1996

19 - Hof13-IP

8



# sorting things out

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**the American Way** (P&C) 34% -- Krish Sigler, Sophia Skowronski

**the French Way** (P&TM) 16% -- Mondee Lu, Meghna Dholakia

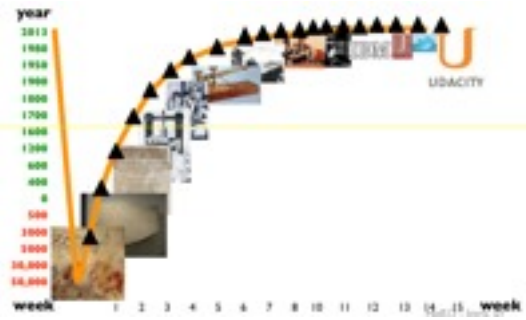
**the UK Way** (three apart) 12% -- Hurshal Patel, Julian Gill

**three together** 18% -- Joseph Schadlick, Tamara Takeshita

**© & TM** 6% -- Jessica Park, Joseph Martin

**???** 14% -- Jing Wang, Steven Rivera

# overview



developing  
*iproperty*

what are we  
talking about?

rights and  
wrongs?

skin in the  
game?

age of  
information



# skin in the game?

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**who has ...**

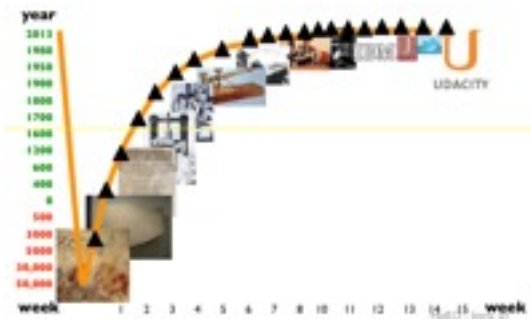
patents

trademarks

copyrights

*and what's on your machines?*

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information



# danger?

## Danger Mouse and EMI Settle "Dark Night of the Soul" Dispute



Like 0 Tweet 0 +1 0 Submit

By DANIEL KREPS

MARCH 3, 2010 4:21 PM ET

Nearly nine months after Danger Mouse's *Dark Night of the Soul* project hit stores with a blank CD, the producer and EMI have reached an agreement to formally issue the album with music on the compact disc, the **BBC reports**. As ***Rolling Stone* wrote** last May, a legal hassle between Danger Mouse, or Brian Burton, and EMI stemming back to *The Grey Album* — Danger Mouse's mash-up of the Beatles' *White Album* with Jay-Z's *Black Album* — held up the release of *Dark Night*, a collaboration featuring the Shins' James Mercer, David Lynch, Julian Casablancas, Frank Black and more artists.

# Dee Snider To Paul Ryan: We're Not Gonna Take Your Use Of Our Music

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329

TWEET THIS STORY

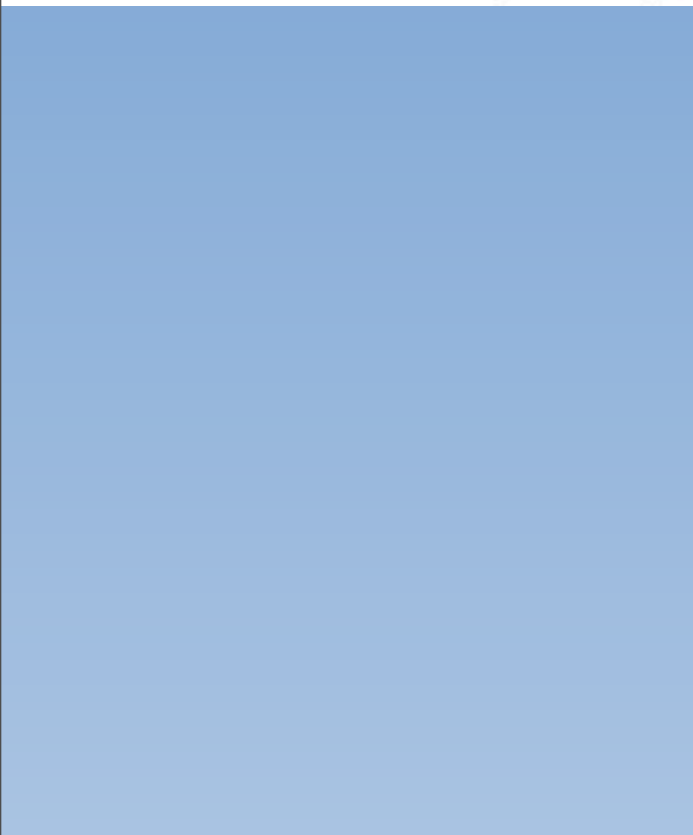
Email

EMAIL THIS STORY TO A FRIEND



BENJY SARLIN - AUGUST 21, 2012, 6:10 PM | 28103

Rock singer Dee Snider is incensed with Paul Ryan for playing his 1984 hit "We're Not Gonna Take It" as his intro music at a Pennsylvania rally on Tuesday.



## take it?







GAS Archive/Redfema via Getty Images

The rock group Survivor, around 1979. Their hit "Eye of the Tiger" was used by Newt Gingrich.

By JAMES C. MCKINLEY Jr.

Published: February 3, 2012

**a hot duo?**

# eyes of the newt?





# Tom Petty: Michele Bachmann Can't Use My Song **American girl?**

By **GLEN LEVY** | @glenjl | June 29, 2011 | 17

Like 561 Send Tweet 36 +1 0 Share 3



If Michele Bachmann becomes the next President of the United States, it's safe to say that Tom Petty won't be playing the inauguration.

When the newly minted Republican presidential candidate left the stage in Waterloo, Iowa, after making a nationally televised speech to announce her candidacy, Petty's track "American Girl" could be heard playing her off. According to NBC's Kelly O'Donnell, Petty's manager will be asking Bachmann's team to not use the song again.

19 - Hollis 16





re-cant





# to live outside the law ...

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2000

- April: 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.





to live outside the law ...

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April 23rd, 2009



## Wikipedia Threatens Artists for Fair Use

Commentary by Corynne McSherry

Can a noncommercial critical website use the trademark of the entity it critiques in its domain name? Surprisingly, it appears that the usually open-minded folks at Wikipedia think not.

Last February, a pair of artists, working with several collaborators, created a Wikipedia article and invited the general public to add to it, following Wikipedia's standards of credibility and verifiability. The work was intended to comment on the nature of art and Wikipedia. But Wikipedia editors did not take kindly to the project, and it was shut down within fifteen hours for being insufficiently "encyclopaedic."

Fast forward a couple of months. The artists, Scott Kildall and Nathaniel Stern, have created a noncommercial website that documents the project, called Wikipedia Art. The domain name for the project: wikipediaart.org.

Yep, they used the term "wikipedia" in their domain name. "Wikipedia" is a trademark owned by the Wikimedia Foundation. And now the Foundation has demanded that the artists give up the domain name peaceably or it will attempt to take it by (legal) force.

# free for all?

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

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UNIX SYSTEM LABORATORIES, INC.

Plaintiff,

vs.

BERKELEY SOFTWARE DESIGN, INC.,  
and certain named individuals in  
their collective capacity as The  
Regents of the University of  
California,

Defendants.

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Civ. No. 92-1667  
O P I N I O N

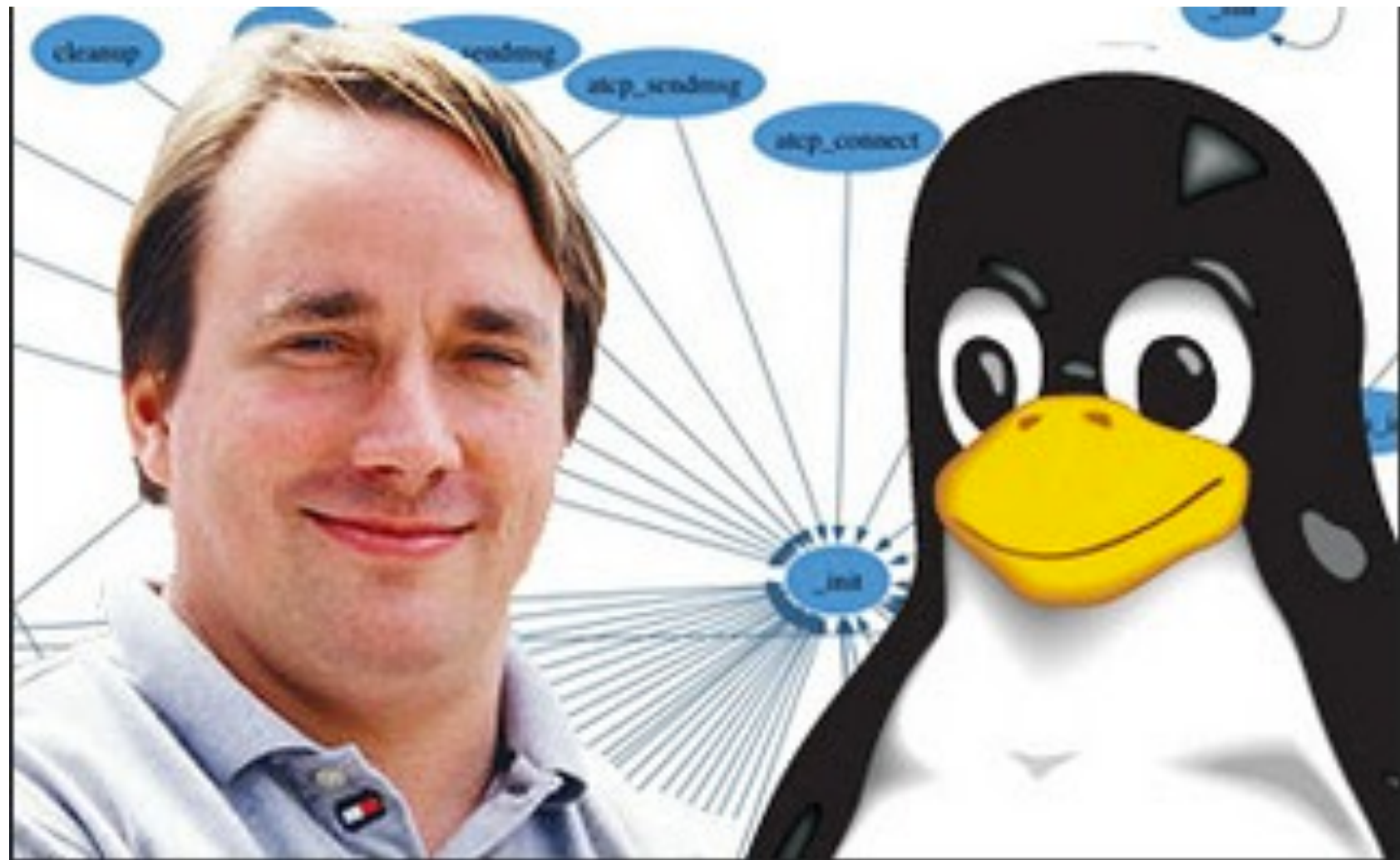
coming up:  
*Computer*

# Linus gets tough on Linux trademark

Vendors can now become official brand licensees, for a price

By [Neil McAllister](#) | InfoWorld

still free?





OPINION  
**The Immortal Life of Henrietta Lacks, the Sequel**

By REBECCA SKLOOT  
Published: March 23, 2013 | 125 Comments

LAST week, scientists sequenced the genome of cells taken without consent from a woman named Henrietta Lacks. She was a black tobacco farmer and mother of five, and though she died in 1951, her cells, code-named HeLa, live on. They were used to help develop our most important vaccines and cancer medications, in vitro fertilization, gene mapping, cloning. Now they may finally help create laws to protect her family's privacy — and yours.



James Boyle, *Shamans, Software, & Spleens: Law and the Construction of the Information Society* (Cambridge, MA: Harvard University Press, 1996)

fair use?

## 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.

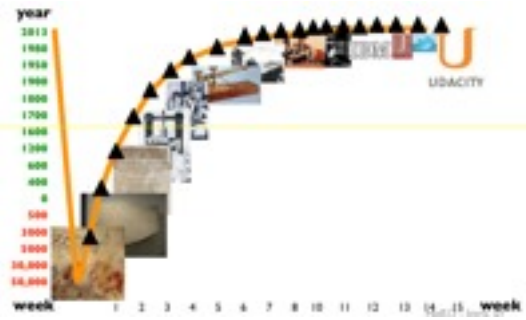
Inventors: **Golde: David W.** (Los Angeles, CA). **Quan: Shirley G.** (Los Angeles, CA)

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

Appl. No.: 06/456,177

Filed: **January 6, 1983**

# overview



developing  
*iproperty*

what are we  
talking about?

property  
to *iproperty*

rights and  
wrongs?

skin in the  
game?

age of  
information



"It's almost like they came on my land and built a house," Mr. Delgado said.

## Surprise Hit Was a Shock for Artists Heard on It



Julie Glassberg for The New York Times

The D.J. known as Baauer has a huge hit with "Harlem Shake," which uses the work of other artists without their permission.

By JAMES C. McKINLEY Jr.

Published: March 10, 2013


Hector Delgado gave up being a reggaetón artist five years ago to become an evangelical preacher in Puerto Rico. So it was something of a surprise when his former manager, Javier Gómez, called him three weeks ago and said his voice could be clearly heard on "Harlem Shake," a song that had gone viral on the Internet and then climbed to the top of the pop chart.

 FACEBOOK

 TWITTER

 GOOGLE+

 SAVE

 E-MAIL



# so what are we talking about?

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## **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."

--Jeremy Bentham, *Manual of Political Economy*, 1794

## **in what way is *information* property?**



Jeremy Bentham  
1748–1832

# properties of property

---

"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"

**what is property?**

**what kinds of property ownership?**

**properties needed for private property?**

**limitations on property rights**



# properties of property

---

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**what is property?**

rules governing access to material goods

**what kinds of property ownership?**

**properties needed for private property?**

**limitations on property rights**

"a property right is a legally enforceable power to exclude others from using a resource, without need to contract with them."

Landes & Posner, *Economic Structure of Tort Law*, 1987

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common

collective

private

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excludable

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## **limitations on property rights**

how extensive

how many: one right--or a bundle?

# how acquired?

---

***occupatio*, for property *res nullius***

--*Codex Justinianus*, 534

**Blackstone's rules for property acquisition**

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

**which one for *iproperty*?**

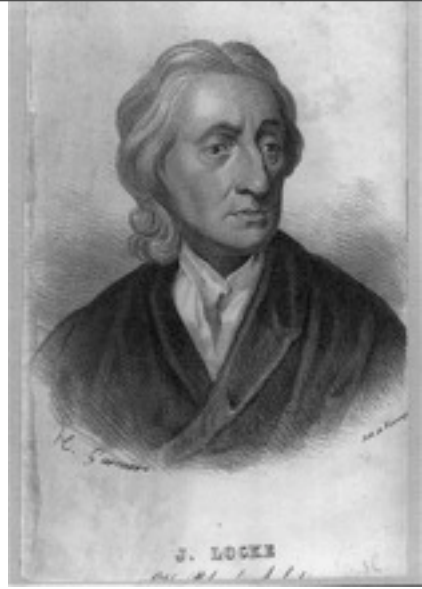


Emperor Justinian  
483–565



William Blackstone  
1723–1780





John Locke  
1632–1704

# uncommon?

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## Locke's view

"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

# paternal view

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Daniel Defoe  
1660?–1731

"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

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

CONJECTURES  
ON  
ORIGINAL COMPOSITION.  
IN A  
LETTER  
TO THE  
AUTHOR  
OF  
Sir CHARLES GRANDISON.

*Si habet aliquid tamquam falsum, sed de diffinitis,  
etiam fuisse nili et secundum. Cio.*

L O N D O N:  
Printed for A. MILLAR, in The Strand, and  
R. and J. DODDLEY, in Pall-Mall.  
M.DCC.LIX.

# single parent?

"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



Alexander Pope  
1688-1744



# like fields?

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Denis Diderot  
1713–1784

"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  
sure le Commerce de la Librarie*, 1763



## metaphysics v. consent

---

"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

Carla Hesse, 'The Rise of Intellectual Property,  
700 B.C.- A.D. 2000: An Idea in the Balance'  
*Daedalus* 131(2)(2002): 26-45.

# theological problems

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## **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



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.

# philosophical problems

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## properties of information

rivalrous?

excludable?

if not, then "**a public good**"

so hard to "incentivize"

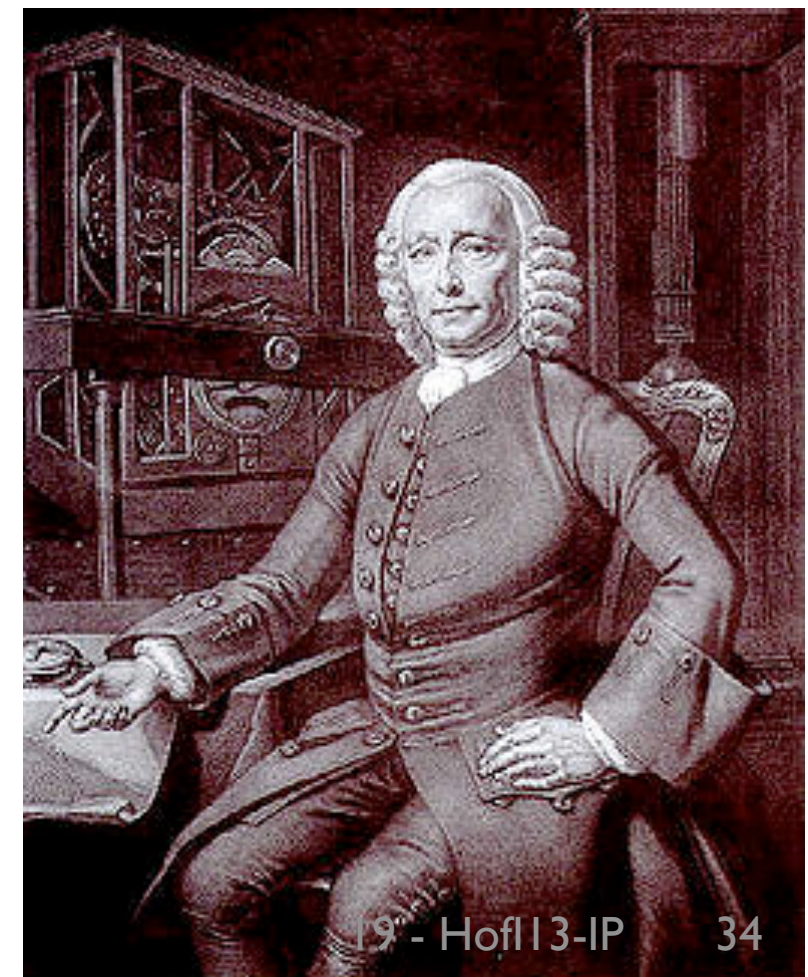
hence ...

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

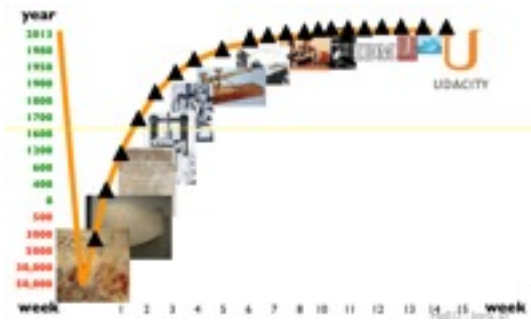
"... no one possesses the less because everyone possesses the whole of it. He who receives an idea from me receives [it] without lessening [me], as he who lights his [candle] at mine receives light without darkening me."

# alternatives we know of?

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# overview



developing  
*iproperty*

your  
views

what are we  
talking about?

rights and  
wrongs?

skin in the  
game?

age of  
information



"Using  
deductive  
reasoning,..."

# historical survey

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## **caveat:**

"it is important to avoid the temptation to recount the narrative in terms of its evolutionary 'progress' ... there is no inevitable or pre-determined direction for copyright law"

Catherine Seville,  
*Internationalization of Copyright*

**[\*nor for IP in general?]**

# the US way

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Although there are slight discrepancies between patents and copyrights, namely that one is used for ideas or inventions while the other deals with artistic works, both are fundamentally the same in that they serve to protect an individual's or company's creation from being hijacked or reproduced by a third party, for a limited time. By contrast, trademarks are permanent; there is no expiration date

-- Krish Sigler

[T]he laws in place in the United States are a better grouping due to the fact that intellectual property is less like corporate property rights, and the U.S. has laws in place to deal with exceptions to both.

--Sophia Skowronski

# the French way

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It acknowledges the differing degrees to which industry and commerce intersects with ideas, and the integral role trademarking plays in both enabling notions of invention, and in creating sites of value and distinction. In the case of artistic and literary works protected under copyright, the issue is more of ensuring the monopolization of distribution and compensation based on use. Trademarking is necessary to create distinction in the use of ideas whereas in copyrighted works, that distinction is inherent in the original work itself.

--Mondee Lu

While material covered under copyright law is still often commercial, it is not "industrial" in the same way that trademarks and patents are. Grouping copyrights with patents and trademarks would make more sense if copyrights were held by publishing houses, such that copyrighted material was part of their commercial entity.

--Meghna Dholakia



# the UK way

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I think the highest form of intellectual property is the patent ... because it is an entirely new approach or discovery that has not been made before. ... There is very little room for overlap between 2 distinct patents. ... I would place copyright below the patent because although there is a significant amount of creative and intellectual novelty, there is also a lot more room for imitation and emulation. ... Lastly, I would place trademark with very weak rights, because there is so much more room for overlap between distinct trademarks.

--Hurshal Patel

Although we now group copyright and patent together separately from trademark, we should develop a system in which they are each an individual categorization. Since the line between entertainment and industry utility is often arbitrary, (in the same way as I found the decision in "Statute of Anne, 1710" for noblemen to declare what price was too high on books as arbitrary) we would be more effective (perhaps not most efficient) by looking at each of these on a case-to-case basis.

--Julian Gill

# all three together

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Considering the fact that the intellectual property laws are all created to provide encouragement and protection for the creators of new forms of science, art, and technology, it would make sense to group trademarks, copyrights, and patents together in order to foster all types of business and academia within a nation.

--Joseph Schadlick

[A]ll three forms of violation of these three contracts would be performed by the same process of the utilization of another company's or individual's property. Therefore, the grouping of all three forms would simplify the process and standardize it relatively easily.

--Tamara Takeshita



The best approach to categorizing intellectual property is pairing copyright with trademarks, with patents in a separate branch. The first two are like siblings, with patents perhaps a second cousin. This is most logical, as copyright and trademark inherently refer to an idea or information that convey something of substance. A patent is a set of exclusive rights given to inventors for a limited time, for an invention offers some valuable solution.

--Jessica Park

Today, ... trademarks seem to be a subset of copyright information: While regular copyright-protected properties are contained products that communicate ideas, trademarks are a form of meta-ideas that are required for distinguishing one product or creator from another. .... This is an argument for the grouping of copyrights and trademarks. They both protect self-contained intangible products (which can be recorded physically, but require audience cognition to perform the desired function).

--Joseph Pranay



???

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Ultimately, I can't really decide which grouping makes more sense to me. They both hold some appeal. I guess in the end how I group it depends on why I'm making the grouping. From a purely philosophical perspective I think I prefer the US interpretation, whereas practically I feel like the French way may make more sense.

--Jin Wang

[S]imilar to the French system where trademarks are grouped together with patents, we should also group together trademarks, except that they can be grouped in either fashion, copyright or patent, depending on the purpose served. If the trademark is to be used only to indicate a source of goods and distinguish those goods from the goods of others, then it should be filed for copyright; however, if the trademark stands in as a design then it should be filed as a patent.

--Steven Rivera



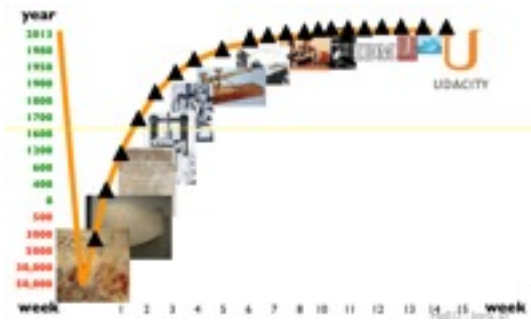
# "US" and "UK way" today

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**registering difference**



# overview



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*iproperty*

patents

copyrights

trademarks

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# patents

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## **regulation**

825: Chinese regulation of almanacs - *authenticity*

## **privileges**

1236: Bonafasus' dyeing

1332: Bartholomeo Verde's windmill

## **patents**

1421: Brunelleschi's boat

1441: Eton stained-glass



# patent & print

## **1504: William Facques, "King's printer"**

patronage

## **1504: Guillaume Cop, Paris University**

signed almanac

## **1511: Durer's patent**

authenticating?





# controlling content

## Stationers' Company

"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*



Mary 1  
1516–1558



# modern equivalent?

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## Copyright Alert System lets content providers monitor your traffic, penalize illegal file sharers

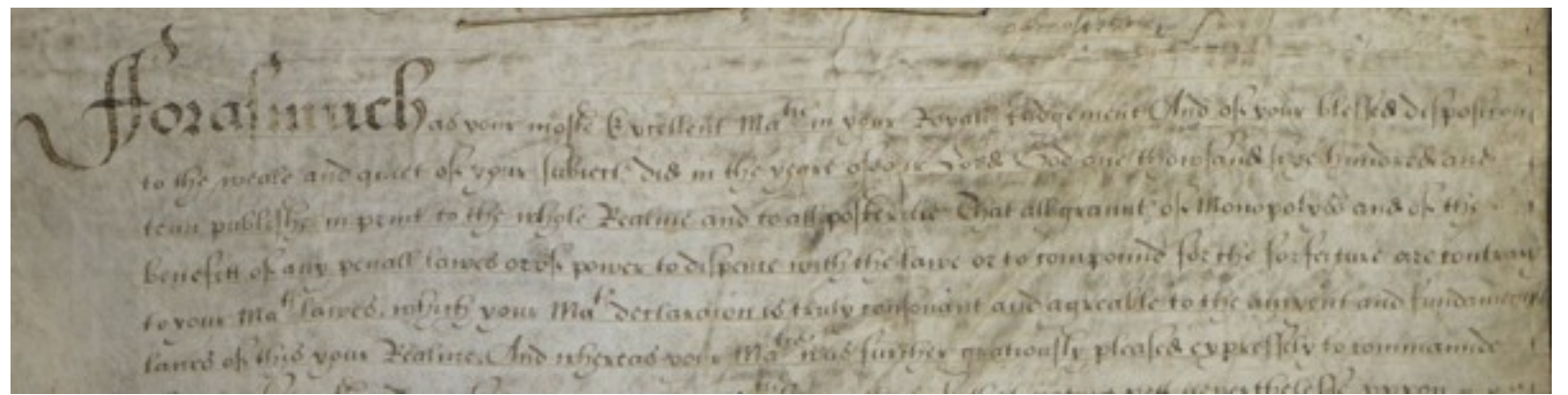
*By John R. Quain / Personal Tech / Published March 05, 2013 / FoxNews.com*







Charles I  
1566–1625

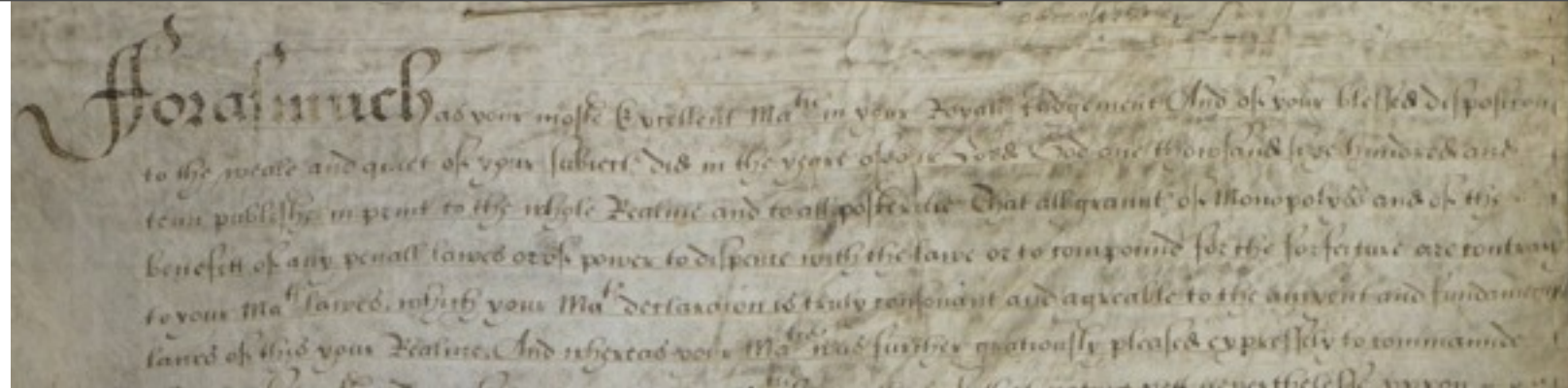


## parsing patents

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"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

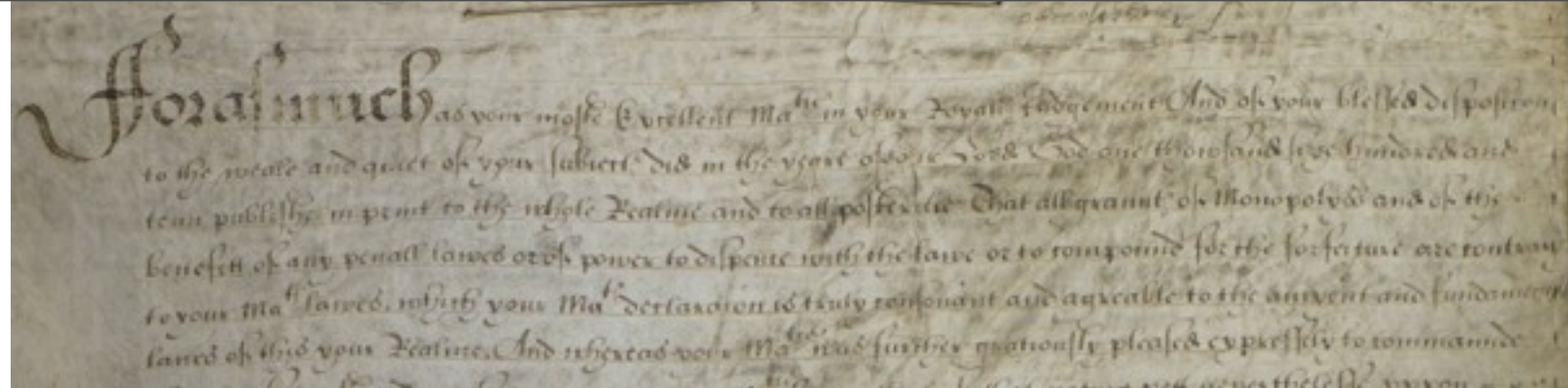


## exceptions

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"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, 1624*



## further exceptions

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"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 psalmes psalter or anie other Bookes lawfully aucthorized and allowed, or to be soe aucthorized 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 makeinge voyde of one Patent of Priviledge for the sole printinge and selling of a Booke called the Theatre of Empire ..."



John Milton  
1608–1674

going open

## 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





Roger L'Estrange  
1616–1704



Nullius in Verba

# going "open"

## 1662: Licensing Act

## 1694/5: collapse of licensing acts

- growing readership: *the reading nation*
- politics and the public sphere
- the end of patronage
- competing monopolies: *booksellers v printers*

"What a revolution they were making, what a power they were calling into existence."

-- Macaulay

## 1710: Statute of Anne



# author's due

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## not printers, nor booksellers

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*

whereas ...

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## **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 ..."

"A new law to give learned men property they had not had before." --Attorney General Thurlow

## not a done deal until ...

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### **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



*Elegant Extracts*

V. Knox, ed.

*\*the Tonson family held Milton's patents*

19 - Hof113-IP

56





Sir William Berkeley  
1605–1677

over here

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**1638: first press in the US** (patronized by MA government)

**1662: licensing required**

**1664: monopoly grant to press**

**1671:** "I thank God, there are no free schools nor printing, and I hope we shall not have these hundred years; for learning has brought disobedience"  
--Governor Berkeley, VA.

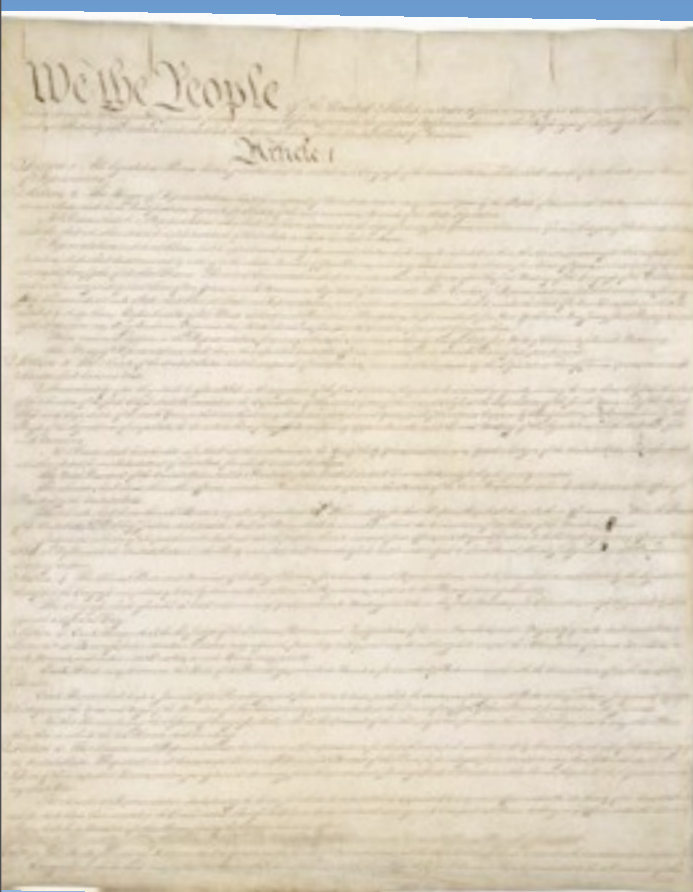
**1672: Usher's legal privilege (MA)**

**1680s: English restrictions on presses**

**1775: 50 printing houses in the colonies**

# constitutional matter

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SECTION 8. 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;

# national reaction

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## **petitions**

David Ramsay:

*-The History of the American Revolution*

*-The History of the Revolution of South Carolina from a British Province to an Independent State*

John Churchman

"several different methods by which the principles of magnetic variation are so explained, that a latitude of a place being given, its longitude may be easily determined"

# from petitions to statutes

124

FIRST CONGRESS. SESS. II. CH. 15. 1790.

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

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 Representatives 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 citizen or citizens of these United States, or residents therein, his or their executors, administrators or assigns, who hath or have purchased or*



# changes

---

"map, chart, book ...

"citizens thereof ...

"copyright ...

"recording in the clerk's office ...

"shall print ... or import ...

"unless he shall first deposit ...

AMERICAN NOTES

FOR

GENERAL CIRCULATION.

By CHARLES DICKENS.

WITH A FRONTISPIECE BY C. STANFIELD, R.A.

LONDON:  
CHAPMAN AND HALL, 193, PICCADILLY.  
MDCCCL.

# internationalization

## UK

1838 International Copyright Act

1842 Copyright Act

1844 International Copyright Act

1851 Anglo-French Treaty

# going global

March 3, 1891.

**CHAP. 565.**—An act to amend title sixty, chapter three, of the Revised Statutes of the United States, relating to copyrights.

copyrights.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section forty-nine hundred and fifty-two of the Revised Statutes, be, and the same is hereby, amended so as to read as follows:

SEC. 10. That section forty-nine hundred and seventy-one of the Revised Statutes be, and the same is hereby, repealed.

Exclusion of aliens  
repealed.  
R. S., sec. 4971, p. 960,  
repealed.

SEC. 11. That for the purpose of this act each volume of a book in two or more volumes, when such volumes are published separately and the first one shall not have been issued before this act shall take effect, and each number of a periodical shall be considered an independent publication, subject to the form of copyrighting as above.

Volumes separately  
copyrightable.

# meanwhile ...

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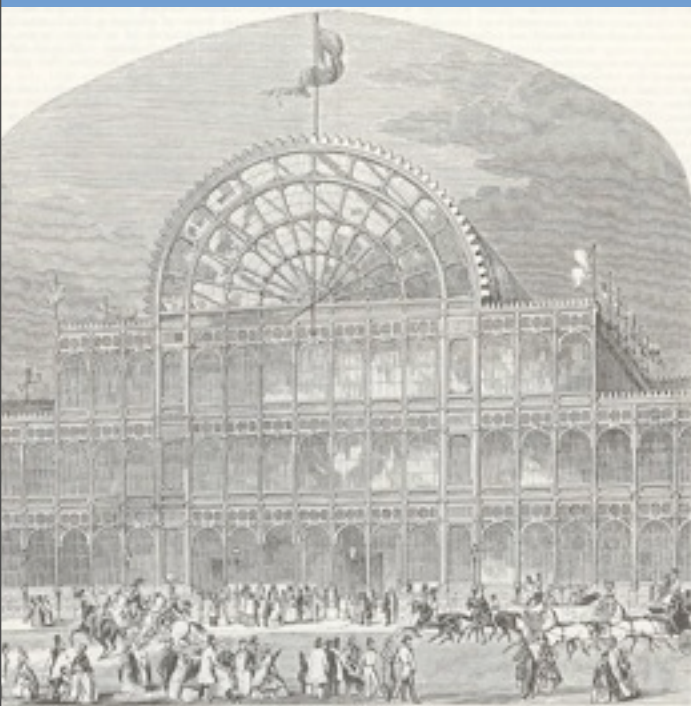
## at the patent office

**US** patent law, 1790, revised, 1836

**UK** Patent Law Amendment Act, 1852,  
Patent reform, 1883

**France** 1791, 1800, 1844

## patent resistance & patent boom



Crystal Palace  
1852



# owning work

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**1800-1900**

**from** the skill of the craftsman

the rights of "free labor"

(and the risk of enticement)

**to** trade secrets

"obligation to preserve such  
secrets must be implied"

non-compete clauses & work for hire

**entrepreneurship vs corporate labs?**



"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"

## the third leg

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

**1879: the "trade-mark cases"**

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

**-- USSC: NO**

**1881 - 1906:** foreign treaty and indian tribes

**1906: commerce clause**

happy 150th  
anniversary:

CHAP. CXXIX.—*An Act concerning Trade Marks and Names.*

[Approved April 3, 1863.]

*The People of the State of California, represented in Senate and  
Assembly, do enact as follows:*

## other side of the country

---

### **neglected firstborn of Anglo-American registration**

CA, 1863

OR, 1864

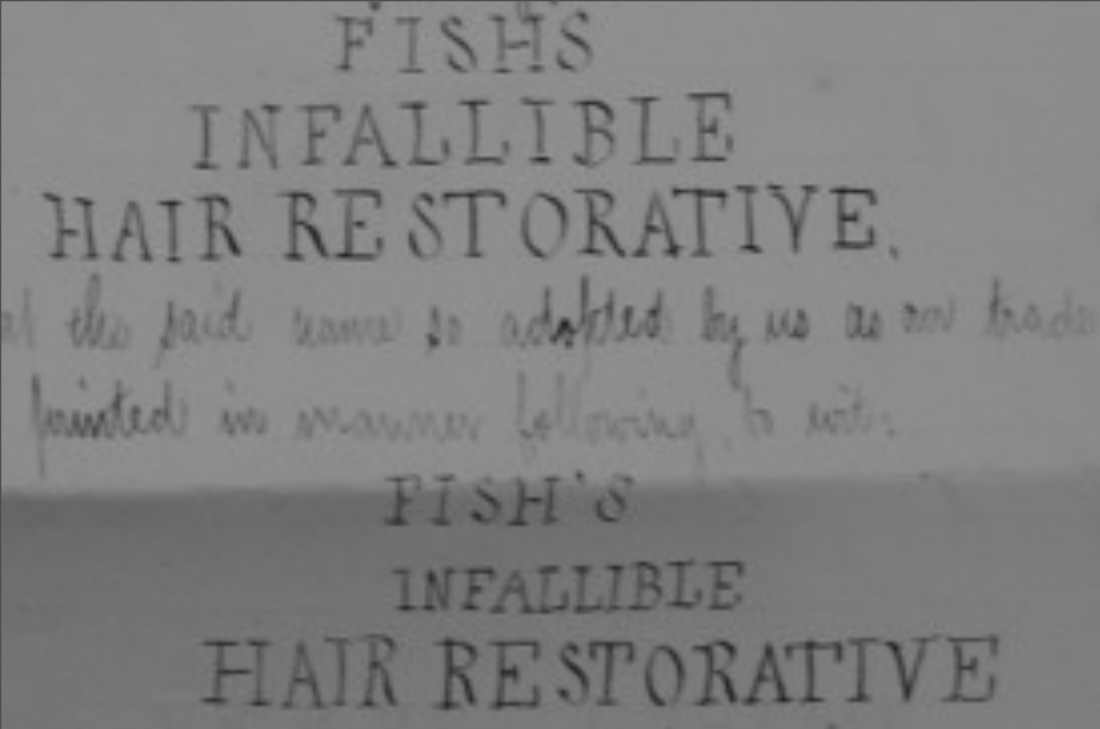
NV, 1864-5

KA, 1864

MO, 1865

US, 1870

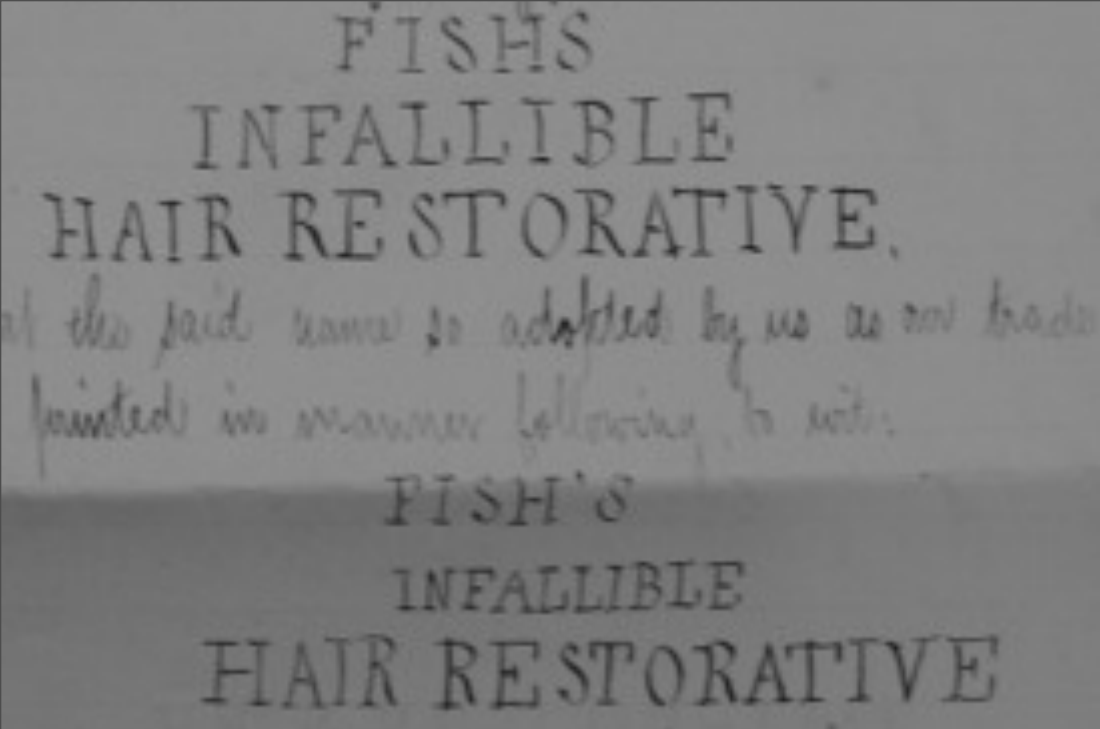
UK, 1875



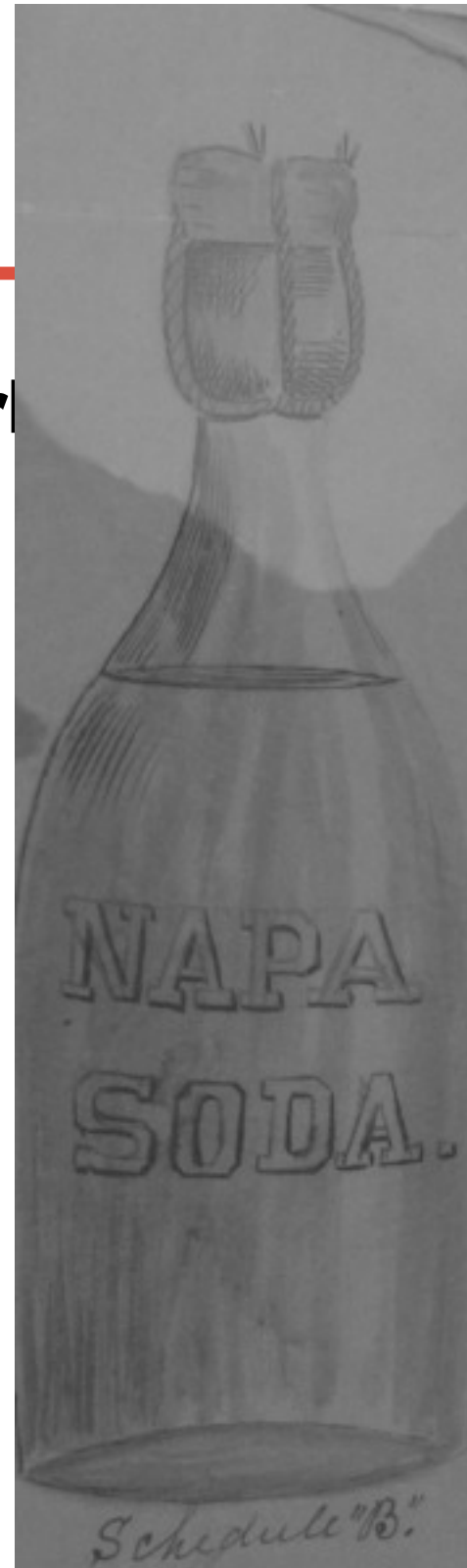
# a quick tour

**early marks**





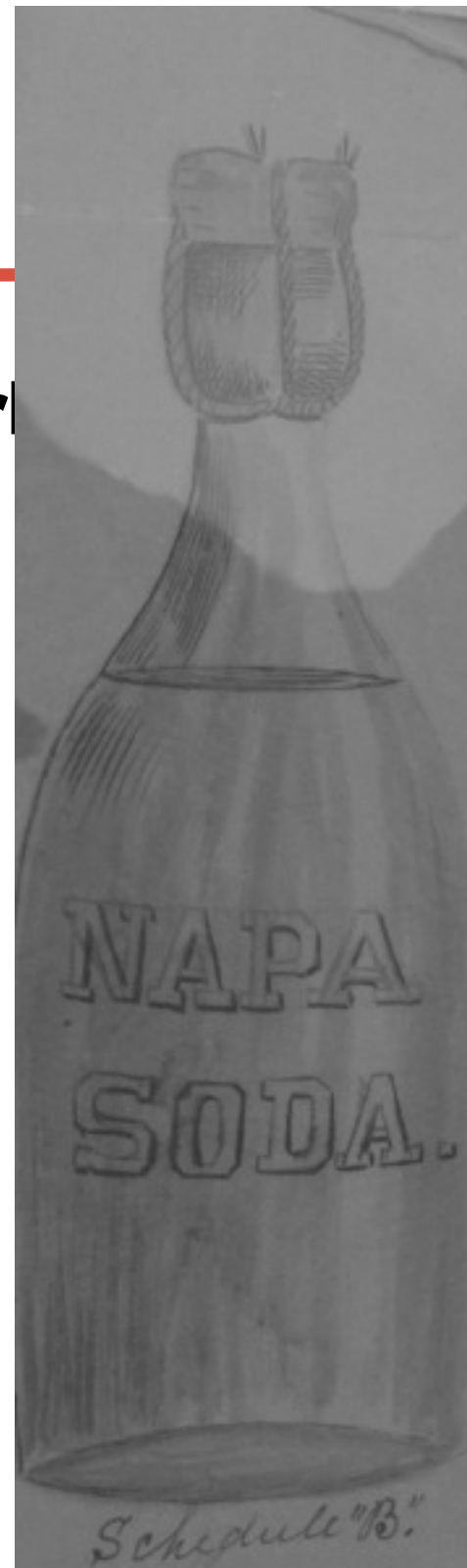
**early mark**



# a quick tour

FISH'S  
INFALLIBLE  
HAIR RESTORATIVE.  
*at the said name so adopted by us as our trade  
printed in manner following to wit:*  
FISH'S  
INFALLIBLE  
HAIR RESTORATIVE

**early mark**



a quick tour

*Apollinaris*  
TRADE MARK.





The said Trade mark or name is as follows  
to wit:

DERINGER  
PHILADEL<sup>A</sup>

Stamped or engraved on the necks. And

DERINGER  
PHILADEL<sup>A</sup>







"FRESNO BUSINESS COLLEGE".

by files and records the same in the office of the Hon.  
of State of the State of California, pursuant to Sec-  
97 and 3198 and 3199 of the Political Code of the State  
ornia.

*W. C. Ramsey.*  
Claimant.

KNOW ALL MEN BY THESE PRESENTS:

That I, JOSEPH H. GOLDMAN, of the City and County of San  
Francisco, State of California, have adopted, and claim the  
sole and exclusive ownership of, the trade-name "PROFESSOR J.  
S. BEECH," and claim the sole and exclusive right to do busi-  
ness under said trade-name.

Dated at San Francisco, California, October 18<sup>th</sup>, 1901.

*Joseph H. Goldman*

STATE OF CALIFORNIA,  
City and County of San Francisco, )  
: ss.

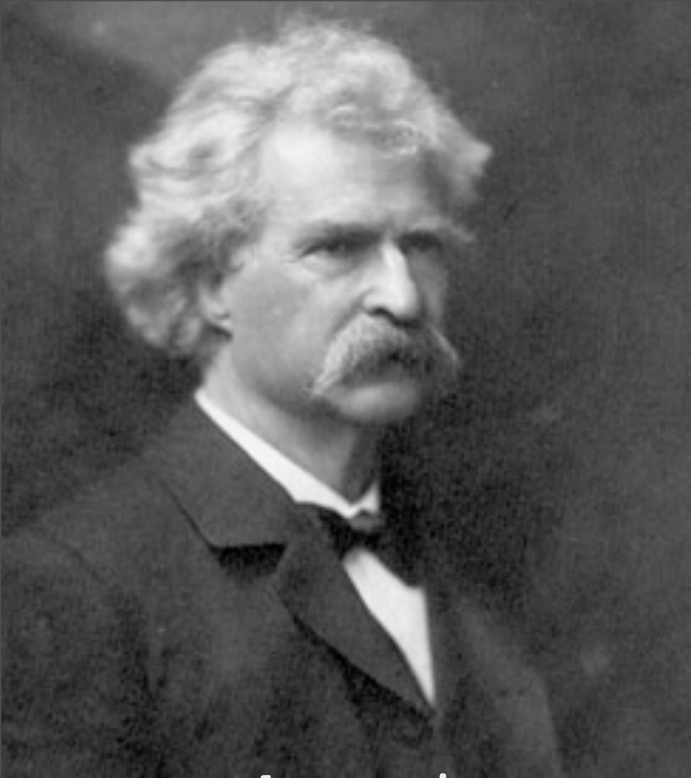
JOSEPH H. GOLDMAN, being first duly sworn, says: I have  
adopted, and am the sole and exclusive owner of, the trade-  
name "PROFESSOR J. S. BEECH," referred to and described in the  
foregoing claim of ownership.

*Joseph H. Goldman*

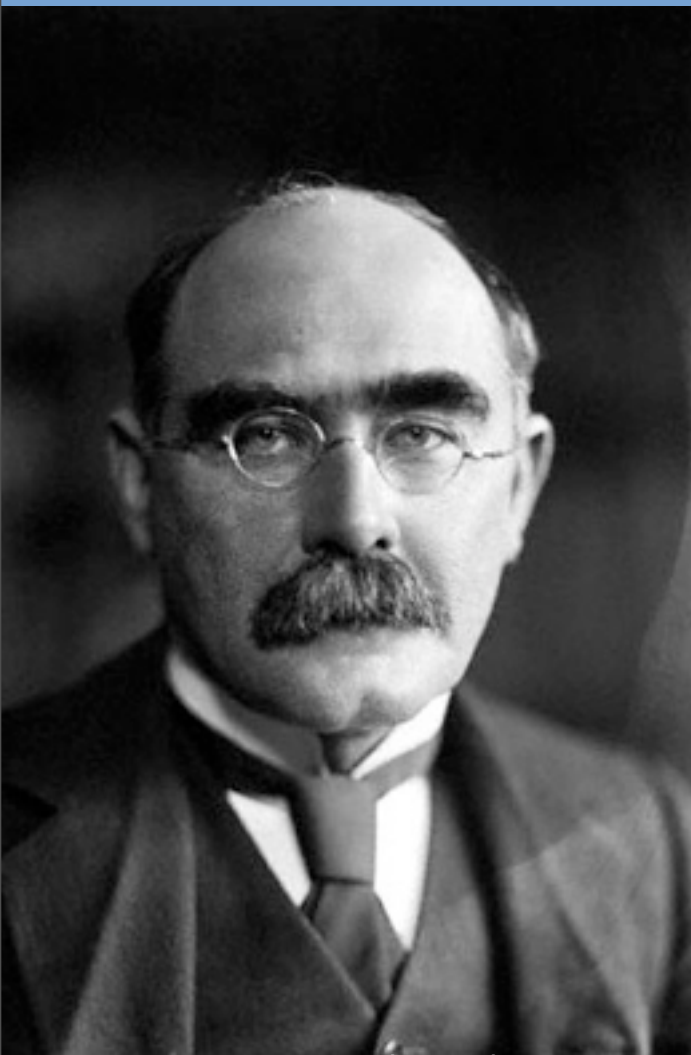
Subscribed and sworn to before me  
this 18 day of October, 1901.

*E. B. Lusk*  
Notary Public in and for the City and County of  
San Francisco, State of California.





Mark Twain  
1835–1910



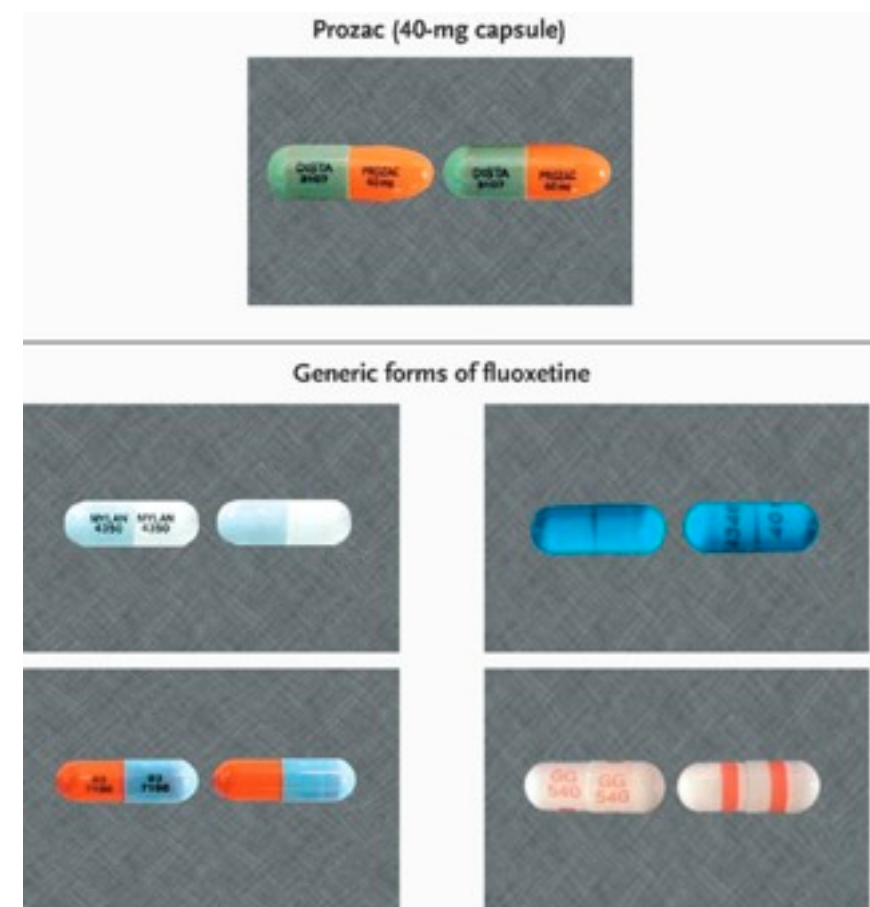
Rudyard Kipling  
1865–1936



# trademark temptations

**"nature's copy's not eterne ..."**

but mark 'em and dress 'em up and ...



# coming up

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## 4 Apr: Broadcast

### Required Reading

- Czitrom, Daniel J. 1982. "The Ethereal Hearth: American Radio from Wireless through Broadcasting, 1892-1940." in *Media and the American Mind*. University of North Carolina Press. Pp. 60-88.