



# INFORMATION AS PROPERTY

## THE ORIGINS COPYRIGHT IN THE 18<sup>TH</sup> CENTURY

July 15, 2009

History of Information – Lecture 5 – Dan Perkel

# Today's Plan

1

- Intellectual property and copyright in the Information Age
- Recap and setting the stage for modern copyright
- The invention of copyright in 18<sup>th</sup> Century UK
- The IP clause in the U.S. Constitution
- And idea in the balance

2

## IP in the Information Age – 3 Stories

7/15/09

# IP in the Information Age - Patents

3

**United States Patent** [19] **4,438,032**  
**Golde et al.** [45] **Mar. 20, 1984**

[54] **UNIQUE T-LYMPHOCYTE LINE AND PRODUCTS DERIVED THEREFROM**

[75] Inventors: **David W. Golde; Shirley G. Quan,**  
both of Los Angeles, Calif.

[73] Assignee: **The Regents of the University of California,** Berkeley, Calif.

[21] Appl. No.: **456,177**

[22] Filed: **Jan. 6, 1983**

## Related U.S. Application Data

[63] Continuation of Ser. No. 229,900, Jan. 30, 1981, abandoned.

[51] Int. Cl.<sup>3</sup> ..... **C12P 21/00; C12N 15/00;**  
**C12R 1/91; C07G 7/00**

[52] U.S. Cl. .... **260/112 R; 260/112 B;**  
**424/85; 424/177; 435/68; 435/172; 435/240;**  
**435/241; 435/948**

[58] Field of Search ..... **260/112 R, 112 B;**  
**435/68, 172, 240, 241, 948**

## OTHER PUBLICATIONS

Saxon et al., *Annals of Internal Medicine*, (1978), 58:323-326.

Weisbart et al., *Clin. Immunology & Immunopathology*, (1979), 14:441-448.

Weisbart et al., *J. Lab. Clin. Med.*, (1979), 93:622-626.

Lusis et al., *In Viva and In Vitro Erythropoiesis*, 1980, pp. 97-106.

Golde et al., *Blood*, (1978), 51:1068-1071.

Golde et al., *PNAS, USA*, (1980), 77:593-596.

Golde et al., *Annals of Internal Medicine*, (1980), 92:650-662.

*Primary Examiner*—Howard E. Schain

*Attorney, Agent, or Firm*—Bertram I. Rowland

[57]

## 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 as well as other

See account in Boyle, James. 1996. *Shamans, Software, and Spleens. Law and the Construction of the Information Society.*

ngs



## 4

### 22 Claims, No Drawings

# IP in the Information Age - Patents

5

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[58] Field of Search ..... **260/112 R, 112 B;**  
435/68, 172, 240, 241, 948

[56] **References Cited**

**U.S. PATENT DOCUMENTS**

4,338,397 7/1982 Gilbert ..... 435/68

*Attorney, Agent, or Firm*—Bertram I. Rowland

[57] **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.

**22 Claims, No Drawings**

# IP in the Information Age - Trademarks

6



Legal Issues  
by Mike Masnick  
Fri, Apr 24th 2009  
11:32am  
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## Wikipedia Threatens Artists Over Domain Name Of Art Project Involving Wikipedia

from the *openness?* dept

First up, a disclosure: back in college, Nathaniel Stern, one of the main characters in this post, was a very close friend of mine -- someone I hung out with a lot. After college, though, he and I mostly lost touch -- other than a random email or Facebook message back and forth. The last time I heard from him, in fact (and the first time I'd heard from him in at least two years), was when he sent out an email alerting me to the fact that he (along with one other artist) had launched a project called WikipediaArt. The idea was to create an art project on *Wikipedia*, but which stayed within Wikipedia's rules. Nat's become a pretty well-known artist over the years, often experimenting in new media art, and the project itself struck me as quite interesting, though I doubted it was even remotely possible, given the way Wikipedia works. You knew that it would get deleted. However, I never expected the folks behind Wikimedia to go legal on them.

But, that's what's happened.

Both the EFF and Paul Levy (who has agreed to represent Wikipedia Art) have alerted us to the news that Wikipedia is **demanding the artists hand over their domain** by threatening legal action. As the EFF and Levy point out, this is a rather surprising move by the Wikipedia foundation, who should know better than to make a bogus demand on a URL just because it includes Wikipedia's name in it:

Src: <http://www.techdirt.com/articles/20090424/0434164635.shtml>

cybersquatting issue  
ts it beyond the reach  
of U.S. trademark law. Moreover, even if U.S. trademark laws somehow  
reached this noncommercial activity, the artists' use of the mark is an obvious  
fair use. Wikipedia Art uses the "Wikipedia" mark to refer to the project: a

# IP in the Information Age - Copyright

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- “By the end of the day, John has infringed the copyrights of twenty emails, three legal articles, an architectural rendering, a poem, five photographs, an animated character, a musical composition, a painting, and fifty notes and drawings. All told, he has committed at least eighty-three acts of infringement and faces liability in the amount of \$12.45 million (to say nothing of potential criminal charges). There is nothing particularly extraordinary about John’s activities. ... He would be liable for a mind-boggling \$4.544 billion in potential damages each year. And, surprisingly, he has not even committed a single act of infringement through P2P file-sharing.”
  - Tehranian, John. 2007. Infringement Nation.

# IP in the Information Age - Copyright

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- “If today's result was unintended, it is only because Congress could not have fully anticipated the ways in which modern technology would create such lucrative markets for revisions... In other words, though plaintiffs contend mightily that the disputed electronic reproductions do not produce revisions of defendants' collective works, plaintiffs' real complaint lies in the fact that modern technology has created a situation in which revision rights are much more valuable than anticipated as of the time that the specific terms of the Copyright Act were being negotiated. If Congress agrees with plaintiffs that, in today's world of pricey electronic information systems, Section 201(c) no longer serves its intended purposes, Congress is of course free to revise that provision to achieve a more equitable result.”



Src: Brenda Semialowski for the NY Times.  
[http://www.nytimes.com/slideshow/2009/07/14/us/0714-CONFIRM\\_9.html](http://www.nytimes.com/slideshow/2009/07/14/us/0714-CONFIRM_9.html)

- District Judge Sonia Sotomayor in  
*Tasini vs. New York Times*. 1997.

# QUIZ

9

- According to Hesse, whose interests were aligned on which side of the debate in the passing of the Statue of Anne? How are these interests represented, if at all, in the language of the Statute?

10

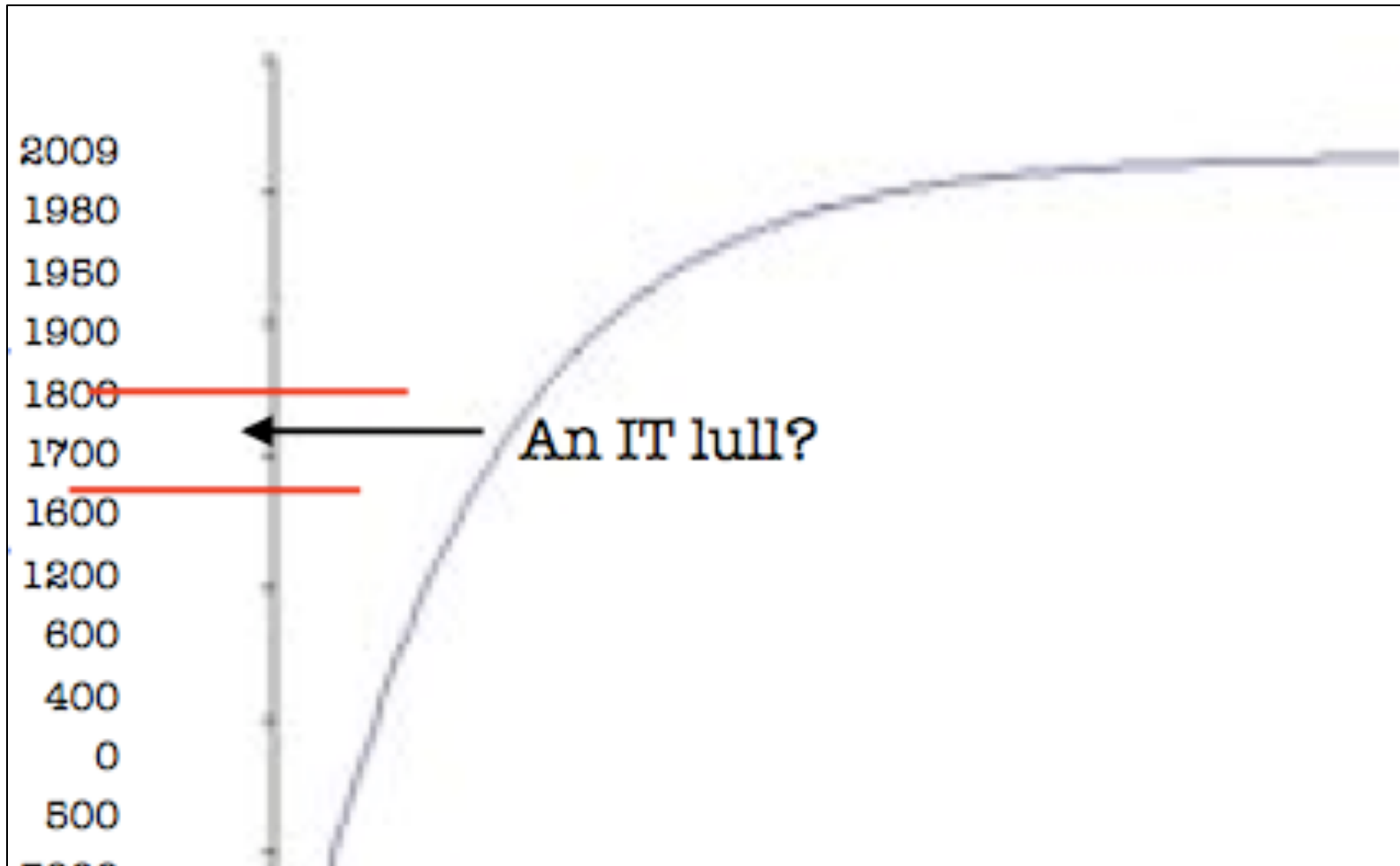
## Recap: Setting the stage for modern copyright

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# An IT Lull?

11



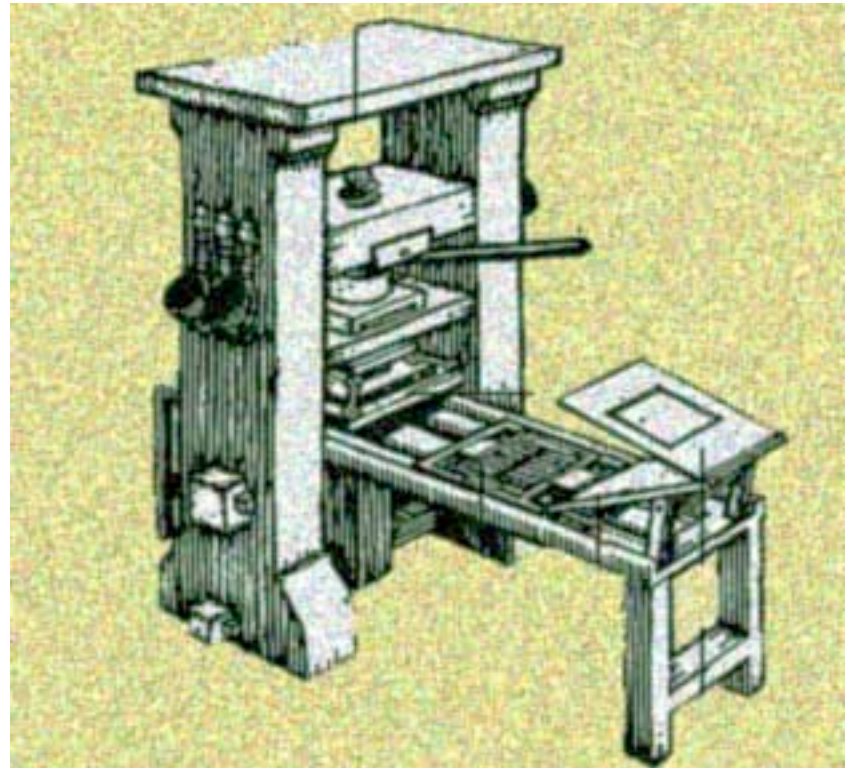
Weeks in the class

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# 1. The Rise of “Print Culture”

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# 1. Print: Not just for books

13



## 2. The emergence of the public sphere

14

- “They referred rather to publics whose members were private individuals rendering judgment on what they read, observed, or otherwise experienced.”
  - James Van Horn Melton “The Rise of the Public in Enlightenment Europe”
  
- “... a new cultural space developed, ... a 'public sphere' in which private individuals came together to form a whole greater than the sum of the parts. By exchanging information, ideas, and criticism, these individuals created a cultural actor -- the public -- which has dominated European culture ever since. Many, if not most, of the cultural phenomena of the modern world derive from [this period] -- the periodical, the newspaper, the novel, the journalist, the critic, the public library, the concert, the public museum...”
  - Tim Blanning, *The Culture of Power*

## 2. Coffeehouses and the public sphere

15

- “Coffeehouses did not only serve as venue to stop by and drink coffee while reading a book or newspaper, it supported the rise of “the public” by providing entertainment, knowledge-sharing, research and other forms of sharing information. For instance, Hooke used coffeehouses to pursue his interests in arts and science” – Clyde
- “coffeehouses became a forum for intimate critical discussion about politics and the state that was open, private and democratic.” – Alexander



## 2. Coffeehouses and the public sphere

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- “Coffeehouses created a distinct environment in which virtuosi and wits could come together and exchange information. Since they were not related to any state community or scholastic institution, they could support different individual ideas and communities. – Saghar
- “...Before such groups typically met in private, like at someone's house. With the new popularity of coffeehouses, they could now gather informally together.” – Lisa

### 3. England in turmoil – Political, cultural, biological

17

- English Civil War, 1642 – 1651
- The Commonwealth, 1649-1659
- The Restoration, 1660
- The Great Plague, 1665
- The Fire of London, 1666
- The Glorious Revolution, 1688



# 4. Changing conceptions of knowledge

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## China

- “I transmit rather than create” – Confucius

## Islam

- *Sharīʿa* law in Islam: against “imposture” or “fraud” (but not against theft)

## Christianity

- “Scientia Donum Dei Est, Unde Vendi Non Potest” - Knowledge is a gift from God, and it cannot be sold
- “Freely have I received, freely I have given, and I want nothing in return.” - Martin Luther

Src: Duguid, Paul citing Hesse, Carla. 2002. The Rise of Intellectual Property

# 4. Changing conceptions of knowledge

19

## □ The Royal Society in England



Robert Boyle  
1627–1691



## 4. The ideology of knowledge

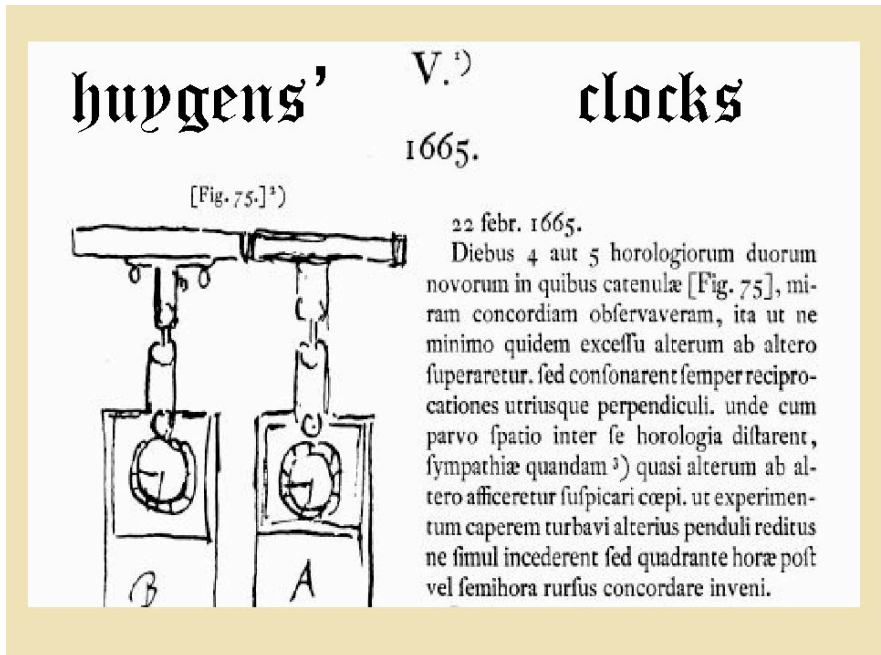
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- “[Publication] is the a most heroick Invention: For by such concealments, there may come very much hurt to mankind. If any certain remedy should be found out against an Epidemical disease; if it were suffer’d to be ingross’d by one man, there would be great swarms swept away, which might easily sav’d.”
- - Thomas Sprat of the Royal Society

# 4. The propriety of knowledge (or drama in the Royal Society)

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- “I my self had an other way of continuing and equalling the vibrations of a pendulum by clock work long ...yet I have not either cryd eureka or publisht it and yet I think I can produce a sufficient number of Credible witnesses that can testify for it about these 12 years. Soe that the argument that he soe much Relys upon to secure to him the Invention is not of soe great force as to perswaid all the World that he was the first & Sole inventor of that first particular of applying a pendulum to a clock.” – Robert Hooke
- “Hooke concealed his invention about Watches too long; pray tell him not to do so with what other things hee hath of that kind.” – Moray to Oldenburg



Src: <http://www.physics.gatech.edu/schatz/clocks.html>

## 5. Untangling precursors to modern “IP”

22

### **Regulation**

- 835 CE: Chinese ordinance forbidding private publication of almanacs

### **Privileges**

- 1236: Bonafasus' dyeing
- 1332: Verde's windmill

### **Letters of protection**

- 1331: John Kempe and his company for introduction of foreign methods of agricultural production

### **Patents**

- 1421: Brunelleschi's boats
- 1441: Eton stained glass

## 5. Untangling precursors to modern “IP”

23

### Venice: Privileges and patents

- 1469: Speyer’s printing patents
- 1474: Venetian patent law
  - “whoever makes in this city any new and ingenious device, not previously made within our jurisdiction, is bound to register it at the office of the Provveditori di Comunas soon as it has been perfected, so that it will be possible to use and apply it”
- 1502: Aldus Manutius patents *italic* typeface



## “Regimes of regulation” in the through the 17<sup>th</sup> C.

1. Systems of grants and privileges (contd)
2. The Stationers’ “copy right”

Major sources used here:

- Rose, Mark. 1994. Authors and Owners: The Invention of Copyright.
- Patterson, Lyman Ray. 1968. Copyright in Historical Perspective

# A tale of two systems

25

- King's patents and privileges: Regulated **Printing**
- Stationers' copy rights: Regulated **Publishing** and **Selling**

## Religious conflict and censorship of the press

26

- 1486-7: Henry VII – “supressing of forged tydings...”
- 1529: Henry VIII – “resisting and withstanding the most dampnable Heresydes / sown within this realme / by the disciples of Luther and other Heretykes...”
- 1538 – First English licensing system
- 1555: Queen Mary – prohibition of books that “conteynye false doctryne, contrarye, and aganynste the Catholique fayth...”

Src: Patterson, Lyman Ray. Copyright in Historical Perspective.

# King's Patents

27

- Descendant from Venetian system
- Privilege and monopoly **on printing** for censorship and control
- Covered whole classes of books “ABCs”, Almanacks, the Bible, prayer books
- Books for which there was no author
- Originally the more coveted of the two systems



# Patents and monopoly privileges

28

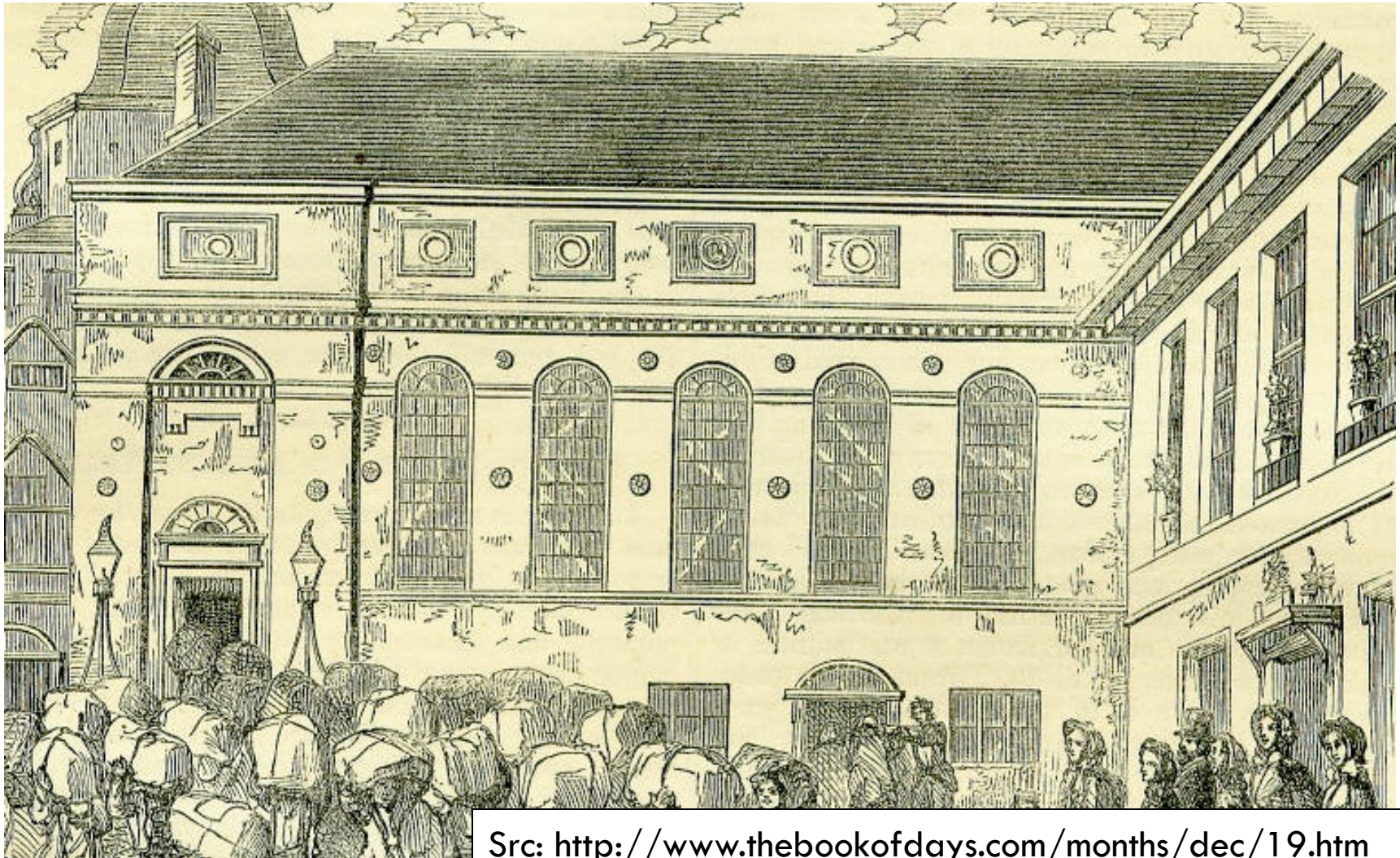
“All Monopolies and all Commissions, Grants, Licences, Charters and Letters Patent heretofore made or granted or hereafter to be made or granted to any Person or Persons, Bodies Politick or Corporate whatsoever, of, or for the sole Buying, Selling, Making, Working or Using any Thing within this Realm... or of any other Monopolies, or of Power, Liberty or Faculty... are altogether contrary to the Laws of this Realm, and so are and shall be utterly void and of none effect

... any Declaration before mentioned, shall not extend to any **Letters Patents and Grants of Privilege for the Term of one and Twenty Years, or under, heretofore made of the sole Working or Making of any Manner of new Manufacture within this Realm, to the first true Inventor or Inventors of such Manufactures.”**

- Statute of Monopolies, England, 1623

# The Stationers' Company

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Src: <http://www.thebookofdays.com/months/dec/19.htm>

# The Stationers' Company

30

- The guild that organized the trade in books
- 1557: Reorganization followed Queen Mary's (Catholic) last proclamation and re-instantiated by Elizabeth I (Protestant)
- Not critical to London political life, yet granted broad sweeping powers
- 1566: Beginnings of close alignment with government
- Creation of the Stationer's "copy right"

# The Stationers' Company's “copy right”

31

- Goal: guarantee on a return of investment on the enormous cost of printing by protecting work from “Pyrates” (... pirates ...)
- To obtain a right to copy and sell a work had to sign the Stationer's Register



# Organization of the print trade

32

**ROLES:** Printing, publishing, bookselling

## **ARRANGEMENTS of production:**

1. Powerful printers took on all three functions
2. Printers would sell work to increasingly powerful booksellers/publishers
3. Printer-publisher who would sell work through booksellers
4. Three distinct entities (not common)

# Tipping the balance of power

33

“The Booksellers being growen the greater and wealthier number have nowe many of the best Copies and keepe no printing howse... neither baere any charge of letter, or other furniture but onlie paye for the workmanship.”

- Christopher Baker. 1582. Report on the Printing Patents. As cited by Patterson, Lyman Ray. 1968. Copyright in a Historical Perspective.

Stationer's “copy right” becomes more important than the printing patents

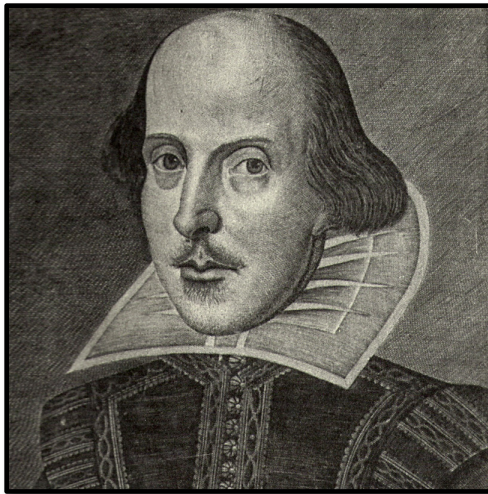
# Who's missing from this picture?

34

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# Who's missing from this picture?

35





# Authors and the controversy over licensing

36

- 1642: The author appears in legislation
  - ▣ Echoing the King, parliament mandates that author's names are on the front of books. (Why?)
- 1662: “An Act for preventing the frequent Abuses in printing seditious treasonable and unlicensed Bookes and Pamphlets an for regulating of Printing and Printing Presses.”
  1. Censorship
  2. Limitations on the numbers of printers
  3. Reconfirmed the power of the Stationer's Company

# Authors against licensing

37

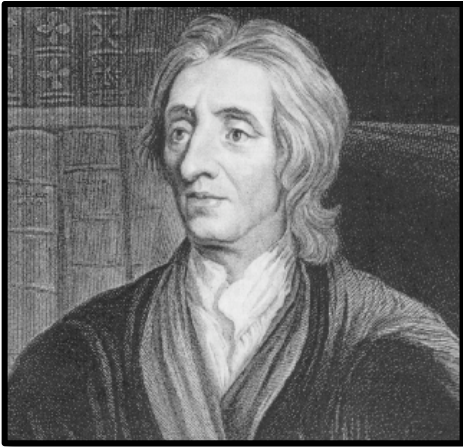
- “Truth and understanding are not such wares as to be monopolized and traded in by tickets and statute and standards. We must not think to make a staple commodity of all the knowledge in the land, to mark and license it like our broadcloth and our woolpacks...

“If we may believe those men whose profession gives them cause to inquire most, it may be doubted there was in it the fraud of some old patentees and monopolizers in the trade of bookselling...”

- Milton. *Areopagitica*, quoted in Rose

# Authors against censorship

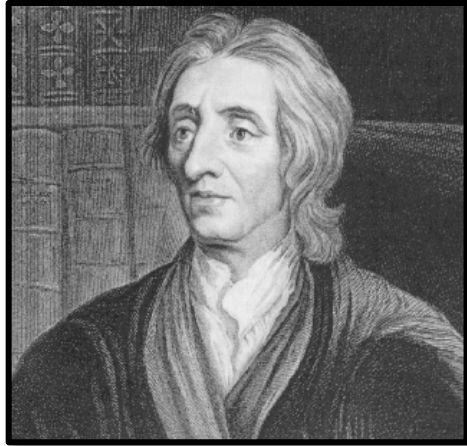
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- Objection to censorship: “I know not why a man should not have liberty to print whatever he would speak”
  - John Locke. 1683. *Memorandum* 203
    - quoted in Rose
- “I know no Nation in the World, whose Government is not perfectly Despotick, that ever make preventive Laws, ‘tis enough to make Laws to Punish Crimes when they are committed.”
  - Defoe. 1704, quoted in Rose

# Authors against monopolies

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- “That any **person or company should have patents for the sole printing of ancient authors** is very unreasonable and **injurious to learning**; and for those who purchase copies from authors that now live and write, it **may be reasonable to limit their property to a certain number of years after the death of the author...** This I am sure, it is very **absurd and ridiculous** that any one now living should pretend to have a **propriety in, or a power to dispose of the propriety of any copy of writings of authors who lived before printing** was known or used in Europe”

- John Locke. *Memorandum 208-209*, quoted in  
Rose

# A legal vacuum emerges

40

- 1695: Licensing Act expires
- Authors' rights are gradually asserted more vehemently in circulated publications
- Economics of book publishing changes
- Realignment of interests – The Stationers' Company (booksellers) assert authors' rights (Why?)

41

# The Statue of Anne, 1710

From Printers' patents to Authors' copyrights

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# Defoe channels the RIAA

42

- “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
- “...nor is there a greater Abuse in any Civil Employment, than the printing of other Mens Copies, every jot as unjust as lying with their Wives, and breaking-up their Houses”

# The booksellers channel Defoe

43

- “But it is said, That is is sufficient for us to enjoy a Term of Years in our Sole Right of Printing. To this we Answer, That if we have a Right for Ten Years, we have a Right for Ever. A Man’s having poses’s’d a Poperty for Ten or Twenty Years, is in no other Instance allow’d, a Reason for another to take it from him; and we hope it will not be in Ours.”

- *More Reasons Humbly Offer’d to the Honourable House of Commons*, Dec. 1709. Quoted in Rose.



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Anno Octavo

# Annæ Reginae.

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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

# What are the essential provisions?

45

7/15/09

# What are the essential provisions?

46

- Grants **authors** or **proprietors** of books and writings...
- “sole Right and Liberty of Printing” books already in print
  - ▣ For 21 years
- “sole Liberty of Printing and Reprinting” books already composed but not yet printed or published
  - ▣ For 14 years (why 14 years?)
- Penalties for piracy
- Requirement to register with the Stationers’ Company
- Requirement to provide copies to the Stationers’ Company and various libraries

# The title

47

- Statute says: *“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.”*
- What it might have said: *“A Bill for The Encouragement of Learning and for securing the Property of Copies of Books to the rightful Owners thereof”* (Wortley’s original bill)
- So what’s the difference?

# The preamble

48

- What it might have said: [works were being printed] “without the Consent of the Authors thereof, **in whom the undoubted property of Such Books and Writings as the product of their learning and labour remains.**” (Wortley’s original bill)
- What are the implications of this clause NOT being there?

# Issues resolved and unresolved

49

- Separation of censorship discussion and copyright for the first time
- Reinforced Stationer's Company position and power
- First assertion of the legal standing and economic rights of authors...
  - ▣ ... yet unresolved question over notion of authors' "common law" rights

## The Author's tumultuous 18<sup>th</sup> Century

“That every man is intitled to the fruits of his own labour, I readily admit... But the property here claimed is all ideas... Their whole existence is in the mind alone.... Yet these are the phantoms which the Author would grasp and confine to himself: and these are what the defendant is charged with having robbed the plaintiff of.”  
Yates, dissenting in *Millar vs. Taylor*



# Some key legal battles

51

- 1720: Burnet vs. Chetwood (on translations)
- 1735: Bookseller's bill asserting author's common law rights fails to pass\*
- 1735: Pope vs. Curll
- 1743: Millar vs. Kinkaid
- 1759: Tonson vs. Collins
- 1769: Millar vs. Taylor
- 1774: Donaldson vs. Beckett

\*Coincides with Hogarth Act, or "Engraving Copyright Act," which passed

# Foundational questions addressed

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- What is the nature of “literary property”?
- What are the property rights of authors?
- Were authors like inventors?
- How do these property rights change, if at all, as works move from the private sphere to the public sphere?

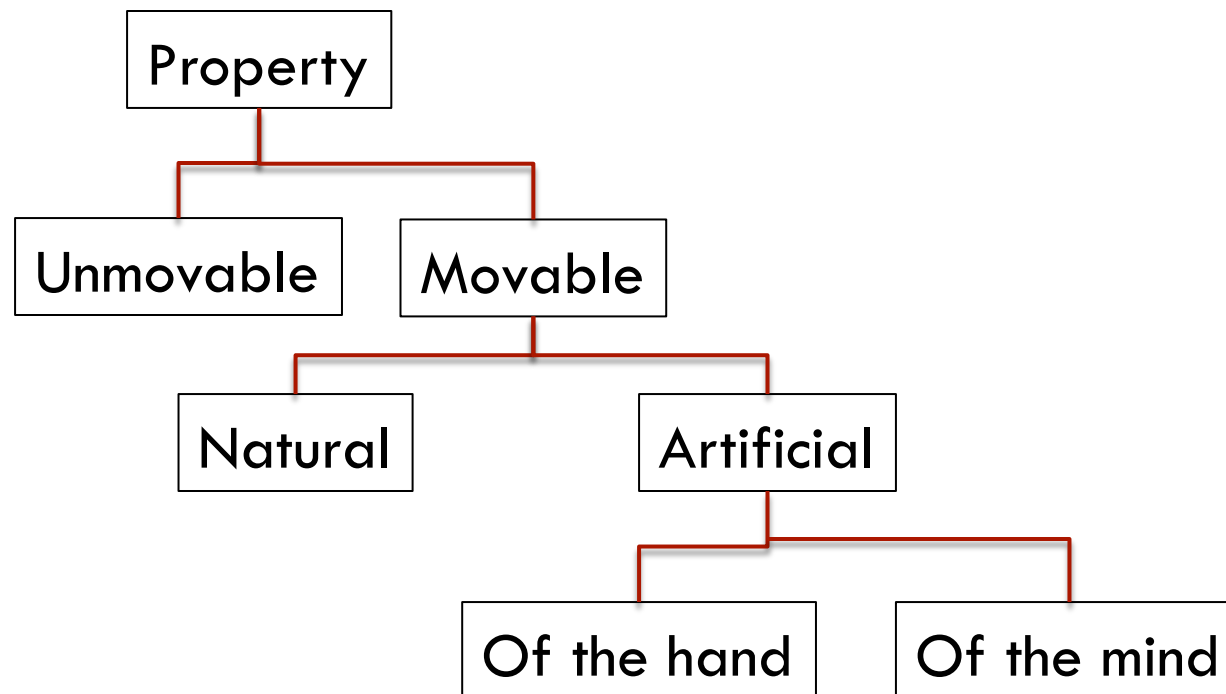
# The materiality of intellectual property?

53

- “I am of opinion that it is only a special property in the receiver, possible the property of the paper may belong to him; but this does not give license to any person whatsoever to publish them [letters from someone else] to the world, for at most the receiver has only a joint property with the writer.”
  - Lord Hardwicke, ruling in Pope vs. Curll
  - quoted in Rose

# Warburton's taxonomy of property

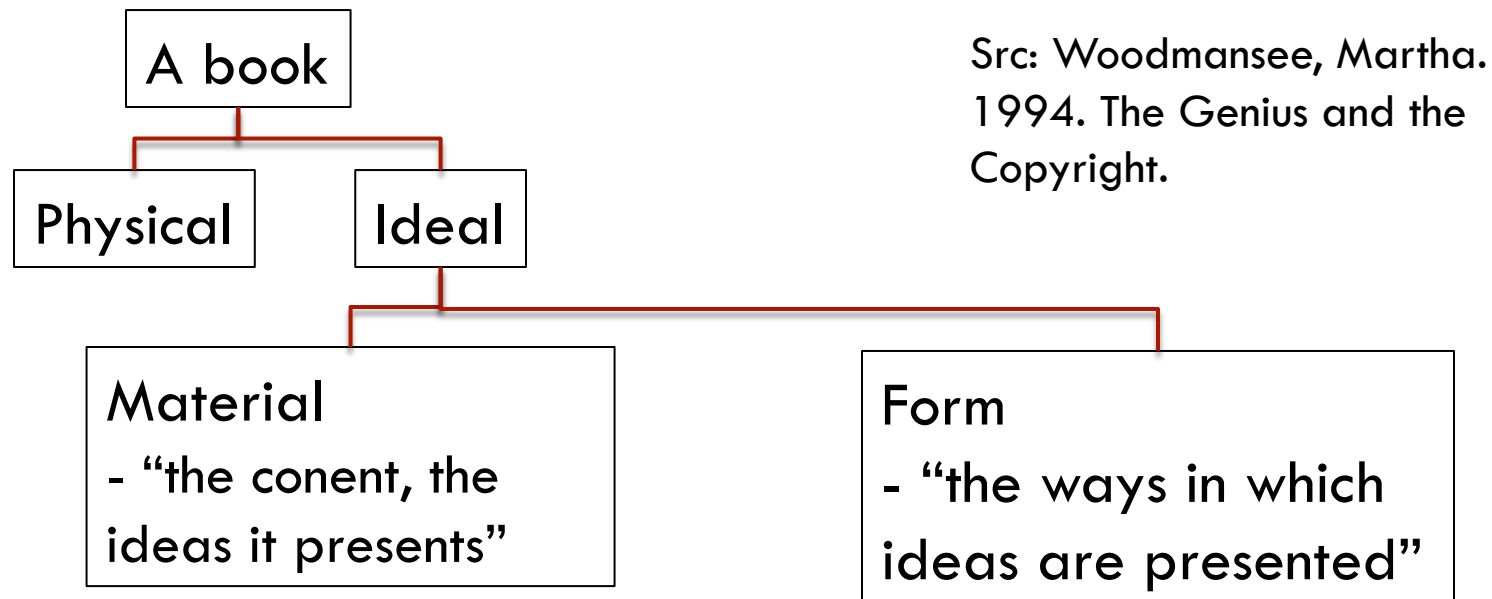
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Asserts the creative force of the author and “Reproduces a discourse of social stratification...” - Rose

# Compare with Fichte (Germany) in 1793

55



Three kinds of property result:

- Ownership of physical object transfers to buyer
- Material aspect is jointly owned
- Formal aspect remains with the seller

## *Tonson v. Collins, 1760 and Millar vs. Taylor, 1769*

56

- Authors have a common law property right that is perpetual and continues after publication
- “That every man is intitled to the fruits of his own labour, I readily admit... But the property here claimed is all ideas... Their whole existence is in the mind alone.... Yet these are the phantoms which the Author would grasp and confine to himself: and these are what the defendant is charged with having robbed the plaintiff of.” - Yates, dissenting in *Millar vs. Taylor*
- Literary property is the combination of “style and sentiment” while “paper and print are merely accidents” - Lord Blackstone

# *Donaldson vs. Becket, 1774*

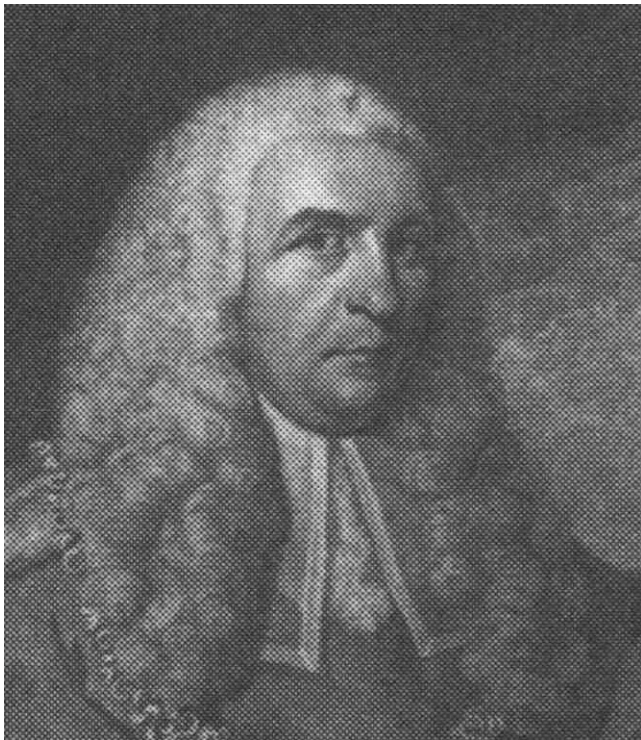
57

- Reverses the previous decision in a huge, sensationalist case brought before the House of Lords
- “Encourage the Spirit of writing for Money, which is a Disgrace to the Writer, and to his very Age” (Dalrymple, in Rose 104)



# Donaldson vs. Becket, 1774

58



- “Glory is the Reward of Science, and those who deserve it, scorn all meaner Views: I speak not of the Scribblers for bread, who teize the Press with their wretched Productions; fourteen Years is too long a Privilege for their perishable Trash. It was not for Gain, that *Bacon, Newton, Milton, Locke*, instructed and delighted the World; it would be unworthy such Men to traffic with a dirty Bookseller for so much as a Sheet of Letter-press the real price of his Work was Immortality, and that Posterity would pay it” (Lord Camden, in Rose 104)
- What kind of an argument is this?

# Long term consequences

59

1. Established prominence for the “encouragement of learning”
2. Author’s rights over publisher’s rights
3. Assertion of public good over individual rights

## BUT ALSO:

1. Separation of author from work (and text as action vs. text as object)
2. The supercession of originality over imitation and change in understanding of what an author is and does. Creation of “genius.”
3. The acceptance of immaterial property
4. New organization of knowledge
5. Implications for privacy and publicity that would have long reaching consequences

## Moving across the Atlantic

“Though the interposition of government, in matters of invention, has its use, yet it is in practice so inseperable from abuse that [the United States] think it better not to meddle with it.”

-Thomas Jefferson. August 9, 1787. Letter to Monsieur L’Hommande. Quoted in Walterscheid. 1994.

# Historical recap

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- 1776: Declaration of Independence and War with England
- 1781: Articles of Confederation and limited power to the federal government
- 1783: Continental Congress recommends states enact copyright clauses (and NOT patent clauses)
- 1787: During Constitutional Convention, intellectual property clause passes unanimously
- 1790: First copyright act passed by Congress
- 1834: Wheaton vs. Peters – Copyright is a granted monopoly, not a common law right

# A State's copyright statute

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- “Whereas the Improvement of Knowledge, the Progress of Civilization, the public Weal of the Community, and the Advancement of Human Happiness, greatly depends on the **Efforts of learned and ingenious Persons** in the **various Arts and Sciences**: As the principle Encouragement such Persons can have to make great and beneficial Exertions of this Nature must exist in the **legal Security of the Fruits of their Study and Industry to themselves**; and as such Security is one of the **natural Rights of all Men**, there being no Property more peculiarly a Man's own than that which is produced by the **Labour of his Mind**.”
  - Preamble to Massachusetts statute
  - as quoted in Walterscheid 1994

# An IP clause in the U.S. Constitution?

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- Was reforming the Articles of Confederation to include an IP clause on the agenda of convention delegates?
- Was an IP clause even necessary given Clauses 3 and 18 of Article 1, section 8?
- And what is peculiar about the final version of the clause in relation to the other clauses?
  - ▣ “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”

# Madison's and Pinckney's proposals

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- Introduced quite late in the process... (August 18, 1787)
- Madison proposal: “To secure to literary authors their copy rights for a limited time... To encourage by premiums & provisions, the advancement of useful knowledge and discoveries”
- Pinckney proposal: “To grant patents for useful inventions[;] To secure to Authors exclusive rights for a certain time [; and] To establish public institutions, rewards and immunities for the promotion of agriculture, commerce, trades and manufactures...”



# Which become...

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- “To secure to literary authors their copy rights for a limited time; To encourage, by proper provisions and premiums, the advancement of useful knowledge and discoveries; To grant patents for useful inventions; To secure to authors exclusive rights for a certain time; [and] To establish public institutions, rewards and immunities for the promotion of agriculture, commerce, trades, and manufactures.”
- ▣ Madison the author?

# Which became...

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- “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.”

# “Science” and “useful Arts”?

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- A problem with definitions
- The importance of elegance and aesthetics

# Lingering doubts

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- “Though the interposition of government, in matters of invention, has its use, yet it is in practice so inseperable from abuse that [the United States] think it better not to meddle with it.”

-Thomas Jefferson. August 9, 1787. Letter to Monsieur L’Hommande.

- “It is better to abolish monopolies in all cases, than not to do it any... The saying there shall be no monopolies lessens the incitements to ingenuity, which is spurred on by the hope of monopoly for a limited time, as of 14 years; but the benefit even of limited monopolies is too doubtful to be opposed to that of their general suppression.”

- Thomas Jefferson. July 31, 1788. Letter to James Madison.

Src: Walterscheid, Edward C. 1994. To Promote the Progress of Science and the Useful Arts...

# A final analysis (after Patterson 1968)

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	State statutes 1783-1787	Constitutional provision 1787	Copyright Act of 1790	<i>Wheaton vs. Peters</i> (1834)
To secure the author's rights	1	2	3	4
To promote learning	2	1	2	3
To provide order in the book trade by government grant	3	3	1	2
To prevent monopoly	4	4	4	1

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# Copyright since the Enlightenment

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# A few important dates

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- 1842: Revised UK Copyright Law
- 1855: The Brussels Convention
- 1866: The Berne Convention
- 1891: International Copyright Act (in the U.S.)
- Meanwhile – new forms of media get protection
- 1928: Moral rights formalized in the Berne Convention
- 1976: U.S. Copyright Act
- 1988: U.S. joins the Berne Convention
- 1996: Formation of World Intellectual Property Org.
- 1998: U.S. Copyright Act (and the DMCA)

# The “forgotten ideas of copyright”

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(What has happened to the publisher?)

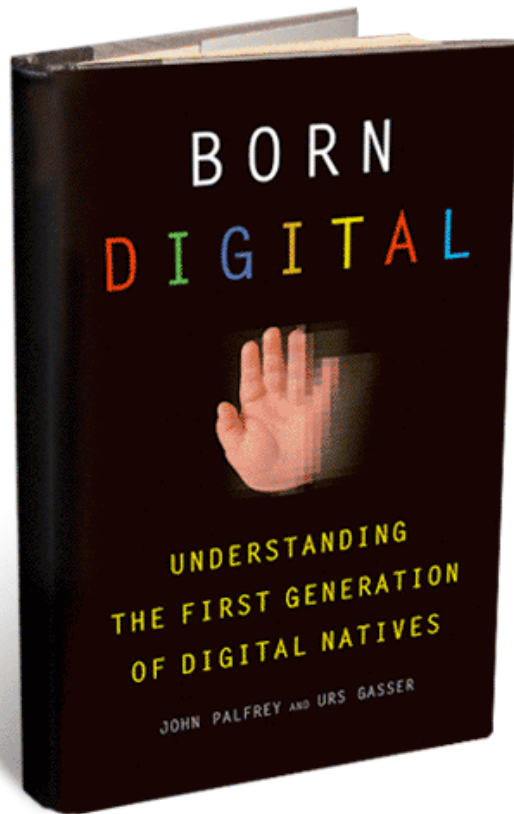
- Danger of monopoly from the publisher (not just the author)
- The different interests of the publisher and the author
- Rights of individual users of texts

Src: Patterson, Lyman Ray. 1968. Copyright in Historical Perspective. pp. 228.



# Copyright in the Future?

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**“Creativity is the upside** of this brave new world of digital media. **The downside is law-breaking.**”

The **vast majority of Digital Natives are currently breaking copyright laws on a regular basis...** Many Digital Natives know that what they are doing is illegal; others are not so sure.

Either way, the practice is pervasive...**an entire generation is thwarting copyright laws as they grow up...**”

- Palfrey, John and Urs Gasser. 2008. *Born Digital: Understanding the First Generation of Digital Natives.*

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