IP & quality

from plagiary to "brands in chains"

Infosys 218,

November 15
"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"
"a mature system of intellectual property law, one that had evolved over centuries"
—Posner

"an enlightenment idea ...modern laws ... rest on a largely unexamined set of contradictory philosophical assumptions".
—Hesse, "The Rise of Intellectual Property"

"Everything you know about intellectual property is wrong".
—J.P. Barlow, "The Economy of Ideas"
everything you know about US history is ...

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

—Hesse
overview

becoming property

patents to copyright

trademarks & "brands in chains"

throughout: looking for quality
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'."

—Martial, *Epigrams*
"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
"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"
"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

1459: John Speyer, patent, Venice

1496: Aldus Manutius, patent, Venice

1504: William Facques, privilege, England

1511: Durer's, patent, Europe?
1504: Guillaume Cop, Paris University protects signed almanac
"le bien et utilité de la chose publicque"

1527: monopoly petition to prevent:
"les faultes et incorrections que lesditz imprimeurs y pourroient commetre en son absence"
1518 first printing patent

1557 Stationers' charter
printers, "binders, stitchers, concealers, sellers, publishers & dispersers"
the "English Stock"

17th century & civil war
in the country & in the trade
"the old patentees and monopolizers".
—Milton
"His NAME at the Bottom of a Title Page, does sufficiently recommend the Book"
"His NAME at the Bottom of a Title Page, does sufficiently recommend the Book"

"Sometimes 5 *Imprimatur* 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 spunge".

—Milton, *Areopagitica*
looking for authority

1694/5: licensing lapses

"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*

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

Joseph Loewenstein, *The Author’s Due*
"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
"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
"somebody to answer ... the last seller ... unless the Name of the Author, Printer, or Bookseller be affix'd to the Book".
—Defoe

"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
O, for my sake do you with Fortune chide,
The guilty goddess of my harmful deeds,
That did not better for my life provide
Than public means which public manners breeds.
Then comes it that my name receives a brand,
And almost thence my nature is subdued
To what it works in like the dyer's hand.

Sonnet 111

"The stationers made 'Shakespeare'."
"The author-work relation is embedded in library catalogues, the indexes of standard literary histories.... It is pervasive in our education system ... institutionalized in our system of marketing cultural products ... the name of the author .... becomes a kind of brand name."

Mark Rose, *Authors & Owners*

"The name as an individual trademark ..."

Foucault
or convenience?

the author: "an instrumental convenience in regulatory struggles carried on within the book trade"

—Loewenstein, *The Author's Due*
how natural?

publishers – printers – editors – authors
producer – director – actors – screenwriter
stations – networks – production companies – directors – actors – writers
record company – producer – musicians – singers – songwriters
company – director – actors – playwright

other genres
dictionaries, encyclopedias, romances, translations ...
"He was Lambert Strether because he was on the cover, whereas it should have been for anything like glory, that he was on the cover because he was Lambert Strether".
branding ideas?

"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

**Arrow's brand**

"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
after Anne

business as usual
booksellers' claim common law rights in copy

despite parsing property:
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".

LC Hardwicke

["In other words, the bottle was protected, not the wine". --Barlow]
Anne affirmed

1774 Donaldson v Becket
booksellers defeated.

alternative strategies
quality editions
English Poets
encyclopaedias
dictionaries
Shakespeare
"[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
19th century

international
- fears:
"vile French pirates"

France: "sapped by an insistent flow of scandalous, often pornographic publications"
—Darnton

radical underworld
Shelley
Byron
Dugdale
19th century international treaties

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

1857: France & trademark treaties

1886: Berne Convention
contradictions

pragmatism:
developing nations and public interest
Dickens, 1842
Funk
Twain

idealism?
France, Hugo, droit d'auteur
democratizing invention

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
"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?

brands in chains

trademarks and intellectual property
"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*

"Economists typically pay minor attention to the role of product quality uncertainty in causing concentration" —Richard Nelson
brands in chains
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."

not just cars
magic of chains

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

**dispersal:** global supply chain

**coordination:** J-i-T
"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
deficits?

inventory problems
(Moore's law crises)
Dell, 1989  ("trauma")
Cisco, 2001
AMD, 2002
meritocracy

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%     Maxtor 0.07%     W. Digital -19%
Dell 7% ......   Intel 13% ......   Microsoft 31%

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

supply chains

URGES FEDERAL AID IN RAILWAYS’ PLIGHT
James Speyer Tells Chamber of Commerce Time Is Ripe for Effective Relief.

ASSAILS VIEW OF CONGRESS
Irving T. Bush Pleads for Competent Central Authority to Regulate Terminals.

1917
1942
1951
1966
networks

the Chandlerian economy
"islands of planned coordination in a sea of network relations"
—G.B. Richardson, "The Organization of Industry"

beyond Chandler
keiretsu, networked economy,
"the law of diminishing firms"—Downes & Mui

pre Chandler
"From the jungle and swamp to the city
The painful ascent should be made
From the first rough knottings of barter
To infinite network of trade".
—H.D. Traill
"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
THE FIRST PART OF THE HISTORY OF ENGLAND

BY SAMUEL DANIEL

LONDON, Printed for the Comyn Stationers. 1613.

THE COLLECTION OF THE HISTORY OF ENGLAND.

By S.D.

LONDON, Printed for Simo Wautin. 1615.

Cam Privilegio.

THE COLLECTION OF THE HISTORY OF ENGLAND.

By Samuel Daniel.

The Fourth Edition Revised, at His Last Correct Coppy Printed.

Whereunto is Annexed a Continuation of the History, unto the Reign of Henry the Seventh.

By John Trussell Gent.

LONDON, Printed by E.G. for John Williams at the Middle of the Crowne in Paul's Church-yard. 1615.

THE COLLECTION OF THE HISTORY OF ENGLAND.

By SAMUEL DANIEL

The Fifth Edition Corrected.

With a Continuation of the History, unto the Reign of HENRY the SEVENTH,

By JOHN TRUSSELL

LONDON,

Printed by F. Leach, for Rich. Crofwell, Benj. Tooke, and Theob. Sambrigg, and are to be Sold by WILL. Whimede, near the Crown Tavern in Dockland. MDCXXXV.
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
"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."
“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
S[UPERIOR WINES].—S[PENCER & P]ERKINS,
No. 113, Newgate-street, I[mporters] of W[iine] for upwards
of 40 years, 16 of which they have adopted that admirable
mode of mellowing in large vats of 3 and 1000 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 hab-
itants, and the aged and infirm. Their stock of Old Port, Ma-
dueira, Ruffecella, &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 mon-
ey. Not less than a dozen

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, 85, Ludgate-hill, London.

PURE UNBRANDED 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' P[AY] E[CHERRY at 36s. per dozen, fit for
a gentleman
Post orders on Pic
rian (established u

OLD BEEF & WING PORT (Sandeman’s shipping),
48l. per dozen. Gordon’s golden and pale Sheries, 30l., 35l., and
4l.; Manzanilla and Amontillado, highly recommended for invalids,
48l. and 45l.; old Port, 38l., 42l., and 48l.; white Port, very select
60l.; St. Julian Claret, 30l.; St. Estephe, 35l.; La Rose, 40l.; Leoville
and Latour, 45l., 55l.; Margaux, 60l.; Latte, 70l.; Chablis, 35l.
Pouilly, 48l.; Heck and N愉悦, 35l. and 42l.; sparkling ditto, 65l.,
75l., and 85l.; Ruedesheimer, Steinberger, Johannesberger, and Lieb-
franbulich, 60l.; sparkling Champagne, 48l., 60l., and 72l.; fine old
Sack, Malmsey, Frontignac, Constantia, Tokay, Vermuth, and other
rare wines. Old pale cognac brandy, 65l. per dozen; curacoa, mara-
chino, noynu, cherry brandy, and other foreign liqueurs. On receipt
of a post-office order or reference, any quantity, with a price 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.
### Trademark Cases in Common Law:
#### Product Classes with Most Reported Cases

<table>
<thead>
<tr>
<th>Class</th>
<th>Number</th>
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</thead>
<tbody>
<tr>
<td>Medical preparations</td>
<td>46</td>
</tr>
<tr>
<td>Beer, wines, spirits</td>
<td>42</td>
</tr>
<tr>
<td>Newspapers &amp; publications</td>
<td>38</td>
</tr>
<tr>
<td>Tobacco</td>
<td>16</td>
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<tr>
<td>Sauces</td>
<td>13</td>
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<td>Iron</td>
<td>12</td>
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globally, most litigious plaintiffs

<table>
<thead>
<tr>
<th>Name</th>
<th>Number</th>
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<tbody>
<tr>
<td>Hennessy</td>
<td>6</td>
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<tr>
<td>Wolfe</td>
<td>5</td>
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<tr>
<td>Apollinaris</td>
<td>4</td>
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<tr>
<td>Moet</td>
<td>3</td>
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<td>Guinness</td>
<td>2</td>
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<tr>
<td>Bass</td>
<td>2</td>
</tr>
</tbody>
</table>
**precedent setting**

**England, most litigious**

<table>
<thead>
<tr>
<th>Name</th>
<th>Number</th>
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<tbody>
<tr>
<td>Guinness</td>
<td>12</td>
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<td>Hennessy</td>
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<td>Clicquot</td>
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<td>Martell</td>
<td>3</td>
</tr>
<tr>
<td>Moet</td>
<td>3</td>
</tr>
</tbody>
</table>
direction

60 cases involving alcoholic beverages
7 are horizontal competition

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

386 vertical integration

virtual monopoly

quality assurance

"nobody ever lost their job for buying IMB"
goodbye to all that

the loss of assurance
rise of the clones
"the PC"

3d party
Microsoft
Intel & co
[IBM]/OEM
vertical competition

"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

OEM warrants

CPU warrants

“embrace and extend”
(and extinguish)

FUD & vaporware
vertical competition

**Dell:** Motif, E510n

**Compaq:** Tabs, AMD, Nextgen, MIPS

**HP:** Linux

**IBM:** 386 sourcing

“As sole supplier of the popular chip .... Intel is expected to generate nearly $1 billion in revenue ... margins in the 80% to 90% range”
New Google Service May Strain Old Ties in Bookselling

By EDWARD WYATT
Published: October 3, 2004

FRANKFURT, Oct. 7 - Google Print, the new search engine that allows consumers to search the content of books online, could help touch off an important shift in the balance of power between companies that produce books and those that sell them, publishing executives said here on Thursday.

Google pauses online books plan

Google has put the brakes on its programme to digitise the books in several major university libraries.

In its blog, the search giant said it would temporarily stop scanning copyrighted texts until November to allay concerns about the plan.

The company's library project aims to put millions of volumes online and accessible everywhere via the web.

Google's plan has come under fire from authors who say the internet company should be paid for copying works protected by copyright.

Authors sue Google over book plan

A US writers' group is suing internet search engine Google, claiming that its plan to digitise major library book collections infringes author copyright.

The Authors Guild has filed a lawsuit in the US District Court for the Southern District of New York.

The lawsuit seeks class action status, seeks damages and demands an injunction against further infringements.

Google said it regretted the Authors Guild move.

1695 again?
"The wild side of the Internet typified by blogs and fast-running rumors could be tempered by the heft of these libraries".  
*San Francisco Chronicle*

"Google's newest project .. will help fulfill the original intention of the Internet: to help people find solid background facts quickly".  
*Chicago Sun-Times*

"Most of today's online content was 'born digital, thus cannot be verified. By contrast, library materials become available through Google originate from fully authoritative sources, and cover every conceivable topic since the advent of printing".  
*Michigan Library Press Release*
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?