IT Ethics

Intellectual Property

H. Turgut Uyar

2004-2015

License

Topics

1. Intellectual Property
   - Introduction
   - Theories
2. Copyrights
   - Introduction
   - Regulations
   - DRM
   - License Agreements
3. Patents
   - Introduction
   - Software Patents

Topics

Property

- defined over relationships instead of objects

  If person X owns the object Y, then X can control other people's relationships with Y.

- easier to understand if talking about tangible objects

Intellectual Property

- creative works: works of art
- literature, music, movies, paintings
- computer programs
- functional works: inventions

- not exclusive: taking it doesn't prevent the owner from using it
- (digital formats) not a limited resource: easily reproducible

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Intellectual Property

- what rights to give to the owner?
- not the same as owning a physical property
- hampers competition and progress

- not preferred to give property rights to ideas
- encourage producers to expose their ideas
- making the idea public property after the owner receives financial gains

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Expression

- property for the expression of an idea
- creative ideas have to be “fixed” on a tangible medium
- book, music CD, . . .
- copyright
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- machine
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Trade Secret

- formula, process, design, client list, . . .
- advantage in competition
- must have measures to keep it secret: non-disclosure agreements
- no expiration, no need to publish
- if exposed, no longer a secret
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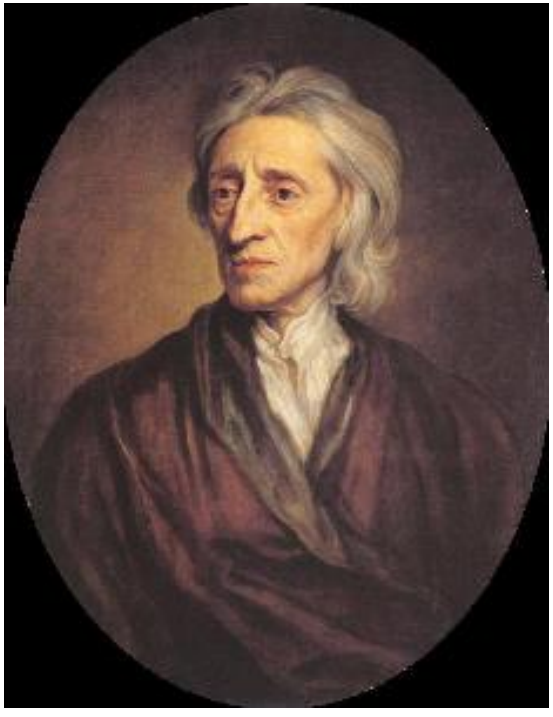
Topics

Labor Theory



John Locke (17th century)

labor theory

a person acquires a natural right
of ownership in something
by mixing his or her labor with it

- "natural right"
- not take more than needed

Utilitarian Theory

utilitarian theory

it is beneficial for the society to allow intellectual property

- if people can earn money from their ideas
  they will make them available to the public

Personality Theory

Hegel (19th century)

personality theory

an intellectual work is an extension of its creator's personality

- its creator should be able to control how it's used

Software Property

- why is it wrong to copy software against its license?
- according to labor theory
- according to utilitarian theory
- according to personality theory
- according to social contract theory

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Copyright

- copyright is granted to the expression of an idea
- software: algorithm is the idea, program is the expression
- it has to be original
- it has to be non-functional
- it has to be fixed on a medium
- it is possible that different people independently come up with the same expression

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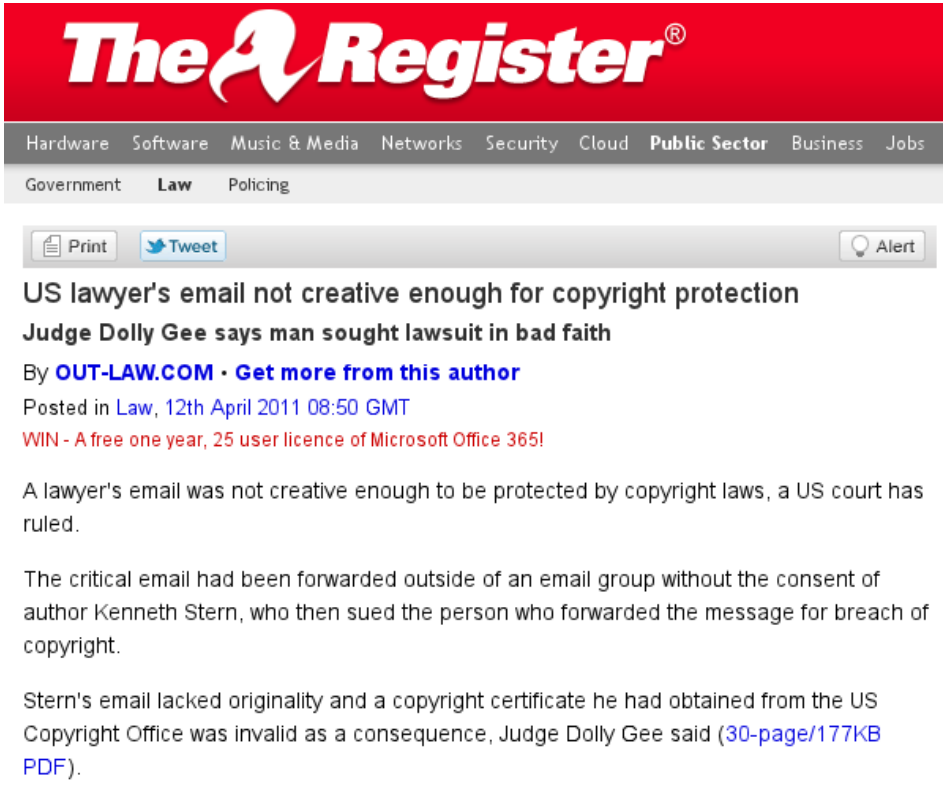
Extent of Copyright

- copying
- distributing
- deriving new works (for example translations, movie adaptations)
- performing (for example theater plays)
- exhibiting (for example paintings)

Example: Copyright of an e-mail message



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US lawyer's email not creative enough for copyright protection

Judge Dolly Gee says man sought lawsuit in bad faith

By **OUT-LAW.COM** · **Get more from this author**

Posted in Law, 12th April 2011 08:50 GMT

WIN - A free one year, 25 user licence of Microsoft Office 365!

A lawyer's email was not creative enough to be protected by copyright laws, a US court has ruled.

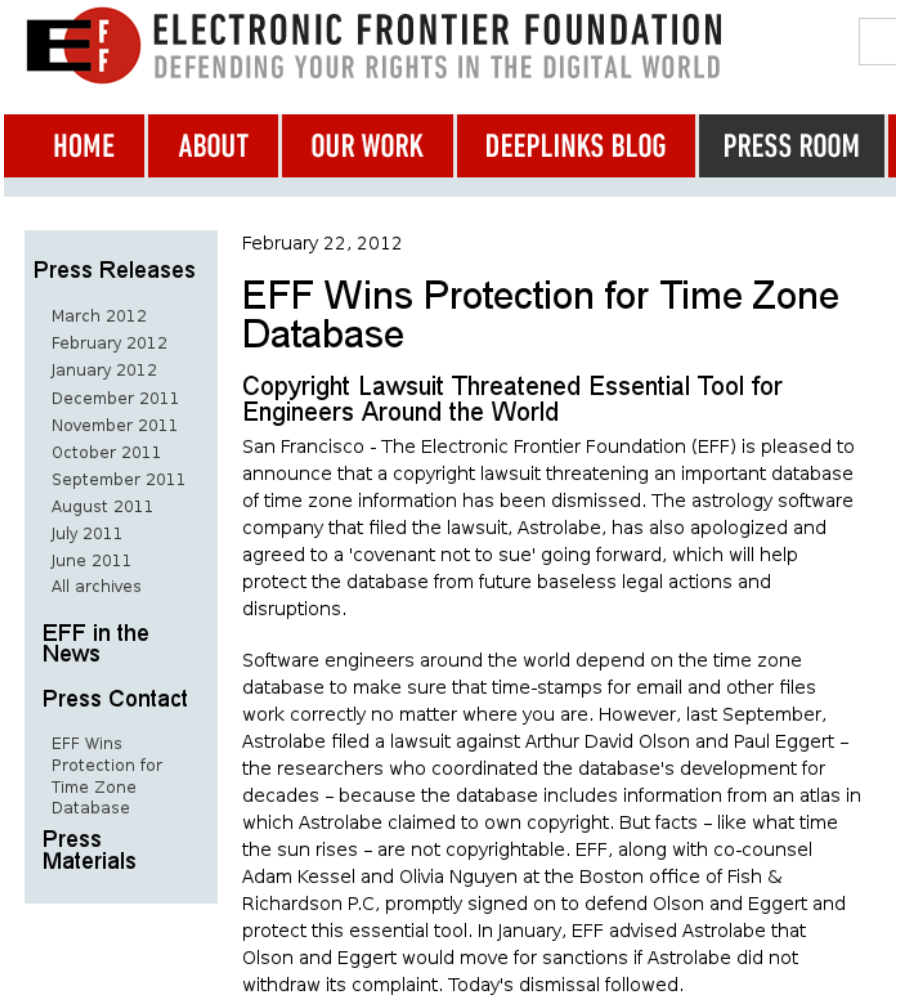
The critical email had been forwarded outside of an email group without the consent of author Kenneth Stern, who then sued the person who forwarded the message for breach of copyright.

Stern's email lacked originality and a copyright certificate he had obtained from the US Copyright Office was invalid as a consequence, Judge Dolly Gee said (30-page/177KB PDF).

- an e-mail message
  is forwarded to a mailing list
  without the approval
  of its author
- its author sues
  for copyright infringement
- the court decides
  that the message
  is not a creative work (2011)

`http://www.theregister.co.uk/2011/04/12/email_not_creative_enough_for_copyright_protection/`

Example: Time zone database



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EFF in the News

Press Contact

EFF Wins Protection for Time Zone Database

Press Materials

February 22, 2012

EFF Wins Protection for Time Zone Database

Copyright Lawsuit Threatened Essential Tool for Engineers Around the World

San Francisco - The Electronic Frontier Foundation (EFF) is pleased to announce that a copyright lawsuit threatening an important database of time zone information has been dismissed. The astrology software company that filed the lawsuit, Astrolabe, has also apologized and agreed to a 'covenant not to sue' going forward, which will help protect the database from future baseless legal actions and disruptions.

Software engineers around the world depend on the time zone database to make sure that time-stamps for email and other files work correctly no matter where you are. However, last September, Astrolabe filed a lawsuit against Arthur David Olson and Paul Eggert – the researchers who coordinated the database's development for decades – because the database includes information from an atlas in which Astrolabe claimed to own copyright. But facts – like what time the sun rises – are not copyrightable. EFF, along with co-counsel Adam Kessel and Olivia Nguyen at the Boston office of Fish & Richardson P.C, promptly signed on to defend Olson and Eggert and protect this essential tool. In January, EFF advised Astrolabe that Olson and Eggert would move for sanctions if Astrolabe did not withdraw its complaint. Today's dismissal followed.

- part of the time zone database used on some computers is based on the atlas prepared by Astrolabe
- Astrolabe sues to prevent the use of the database
- then retracts its case (2012)
- no copyright on historical facts

`https://www.eff.org/press/releases/eff-wins-protection-time-zone-database`

Example: Blizzard vs MDY

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Page last updated at 11:16 GMT, Wednesday, 26 March 2008

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Legal battle over Warcraft 'bot'

The makers of World of Warcraft are locked in a legal battle with a firm that has produced a tool to automate many actions in the virtual world.

Combat forms a core part of the game play

Blizzard is suing Michael Donnelly, the creator of the MMO Glider program, which performs key tasks in the game automatically, such as fighting.

Both sides have submitted legal summaries to a court in Arizona.

Blizzard says Glide is a software bot which infringes the company's copyright and potentially damages the game.

In its legal submission to the court last week, the firm said: "Blizzard's designs expectations are frustrated, and resources are allocated unevenly, when bots are introduced into the WoW universe, because bots spend far more time in-game than an ordinary player would and consume resources the entire time."

'Infringed agreement'

Blizzard argued that Michael Donnelly's tool also infringed the End User License Agreement that all parties have to adhere to when playing the game.

- MDY sells a "bot" for the game World of Warcraft by Blizzard
- Blizzard sues: "program copied to memory"
- court agrees with Blizzard (2008)

`http://news.bbc.co.uk/2/hi/technology/7314353.stm`
`http://virtuallyblind.com/category/lawsuits/mdy-v-blizzard/`

Example: PRS vs Kwik-Fit

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Last Updated: Friday, 5 October 2007, 13:25 GMT 14:25 UK

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Kwik-Fit sued over staff radios

A car repair firm has been taken to court accused of infringing musical copyright because its employees listen to radios at work.

Kwik-Fit had called for the case to be dismissed

The action against the Kwik-Fit Group has been brought by the Performing Rights Society which collects royalties for songwriters and performers.

At a procedural hearing at the Court of Session in Edinburgh a judge refused to dismiss the £200,000 damages claim.

Kwik-Fit wanted the case brought against it thrown out.

Lord Emslie ruled that the action can go ahead with evidence being heard.

The PRS claimed that Kwik-Fit mechanics routinely use personal radios while working at service centres across the UK and that music, protected by copyright, could be heard by colleagues and customers.

It is maintained that amounts to the "playing" or "performance" of the music in public and renders the firm guilty of infringing copyright.

- Performing Rights Society is an organization that protects the intellectual property rights of the music industry
- sues a car repair firm because of staff radios: “broadcasting” (2007)
- sues a department store worker for singing at the workplace: “performing” (2009)

`http://news.bbc.co.uk/2/hi/uk_news/scotland/edinburgh_and_east/7029892.stm`
`http://news.bbc.co.uk/2/hi/uk_news/scotland/tayside_and_central/8317952.stm`

Software Copyright

- copyrights don't protect software against imitation of functionality

example: Lotus vs Borland (1995)

- similarity in the look and functionality of a spreadsheet program
- is the look of a program protected by copyright?
- court: "yes", appeals: "no"

example: Apple vs Microsoft/HP

- desktop interface, icons, ...
- court: "similar to video player buttons or car panels"

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Topics

International Treaties

- Bern Treaty (1887)
- TRIPS: Trade-Related Aspects of Intellectual Property Rights (1995)
- WIPO Copyright Treaty (2002)
- World Intellectual Property Organization

Telif Yasaları

- Turkey: Works of Intellect and Art Act (1995)
- USA: Digital Millenium Copyright Act (1998)
- protection duration: 70 years after the death of the author
- 95 years for works for hire
- copyright is automatic, no need to register anywhere

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Principles

- fair use:
  no need for permission for some uses
- purpose: criticism, news, education, research
- nature of work: fiction vs non-fiction
- extent of use: whole, parts
- effect on the sale of the work

- first sale:
  after first sale, copyright owner has no rights on the copy sold

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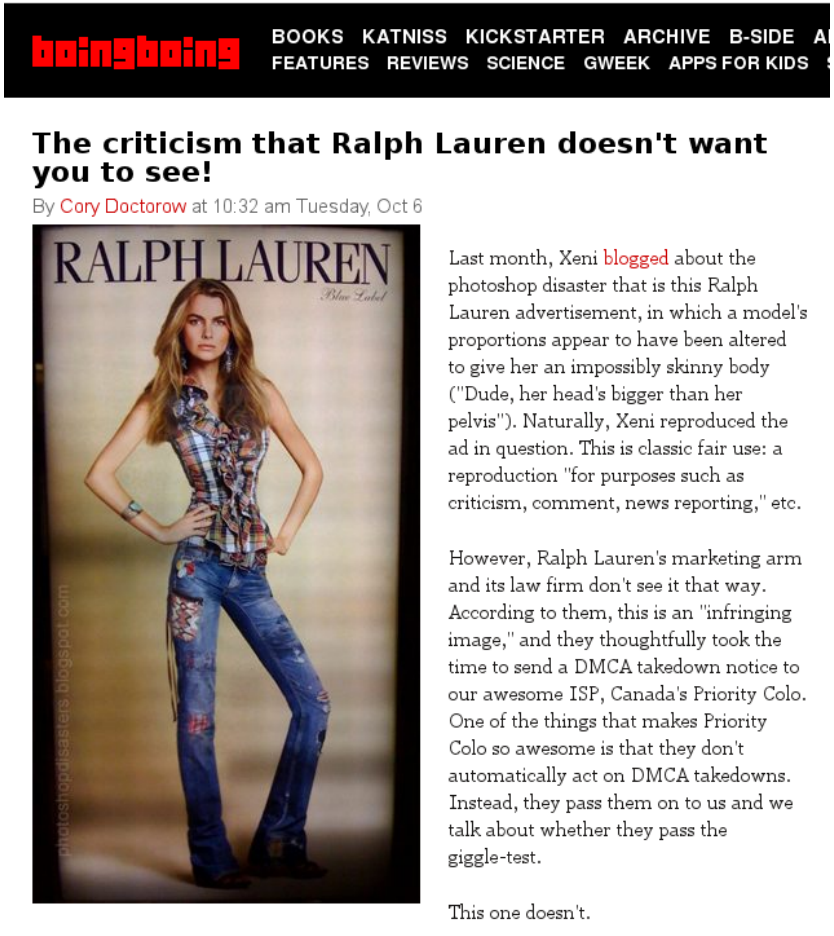
Example: Ralph Lauren ad campaign



boingboing

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FEATURES REVIEWS SCIENCE GWEEK APPS FOR KIDS

The criticism that Ralph Lauren doesn't want you to see!

By Cory Doctorow at 10:32 am Tuesday, Oct 6

Last month, Xeni blogged about the photoshop disaster that is this Ralph Lauren advertisement, in which a model's proportions appear to have been altered to give her an impossibly skinny body ("Dude, her head's bigger than her pelvis"). Naturally, Xeni reproduced the ad in question. This is classic fair use: a reproduction "for purposes such as criticism, comment, news reporting," etc.

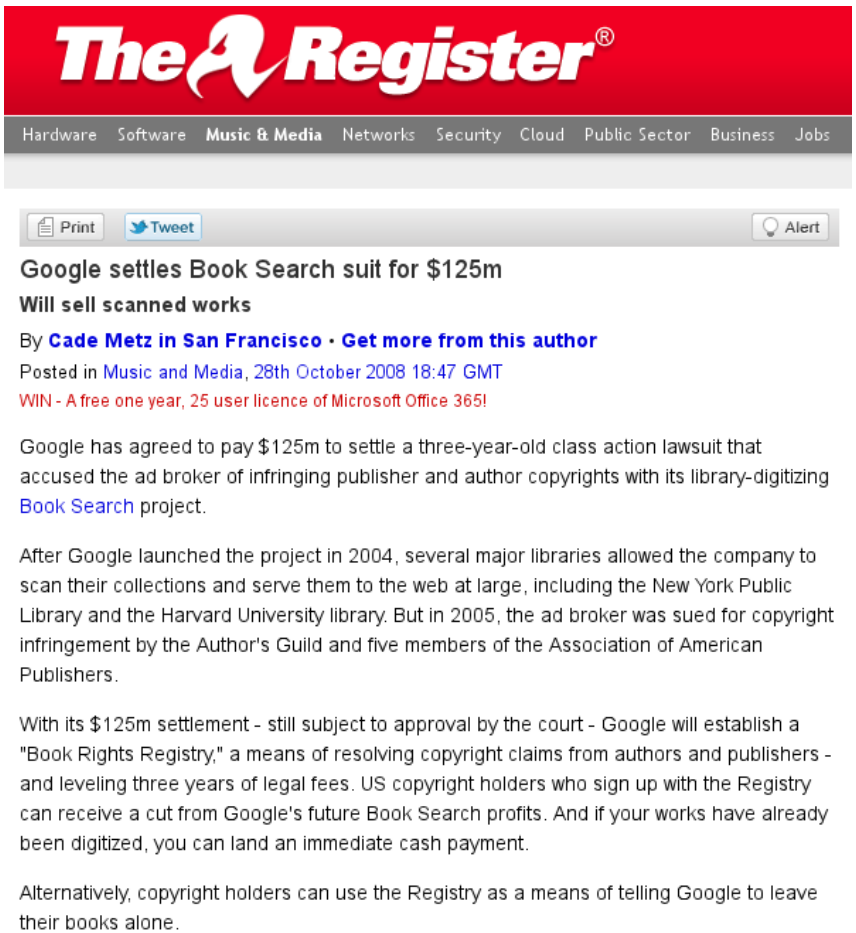
However, Ralph Lauren's marketing arm and its law firm don't see it that way. According to them, this is an "infringing image," and they thoughtfully took the time to send a DMCA takedown notice to our awesome ISP, Canada's Priority Colo. One of the things that makes Priority Colo so awesome is that they don't automatically act on DMCA takedowns. Instead, they pass them on to us and we talk about whether they pass the giggle-test.

This one doesn't.

- an ad photo for Ralph Lauren is heavily criticised
- RL tries to stop sites from using the photo (2009)

`http://boingboing.net/2009/10/06/the-criticism-that-r.html`

Example: Google Book Search



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Google settles Book Search suit for $125m

Will sell scanned works

By **Cade Metz in San Francisco** · **Get more from this author**

Posted in Music and Media, 28th October 2008 18:47 GMT

WIN - A free one year, 25 user licence of Microsoft Office 365!

Google has agreed to pay $125m to settle a three-year-old class action lawsuit that accused the ad broker of infringing publisher and author copyrights with its library-digitizing Book Search project.

After Google launched the project in 2004, several major libraries allowed the company to scan their collections and serve them to the web at large, including the New York Public Library and the Harvard University library. But in 2005, the ad broker was sued for copyright infringement by the Author's Guild and five members of the Association of American Publishers.

With its $125m settlement - still subject to approval by the court - Google will establish a "Book Rights Registry," a means of resolving copyright claims from authors and publishers - and leveling three years of legal fees. US copyright holders who sign up with the Registry can receive a cut from Google's future Book Search profits. And if your works have already been digitized, you can land an immediate cash payment.

Alternatively, copyright holders can use the Registry as a means of telling Google to leave their books alone.

- Google scans printed books and includes pages in search results
- Author's Guild sues, Google claims fair use (2005)
- settlement for 125 million $ (2008)
- 300 thousand € fine in France (2009)

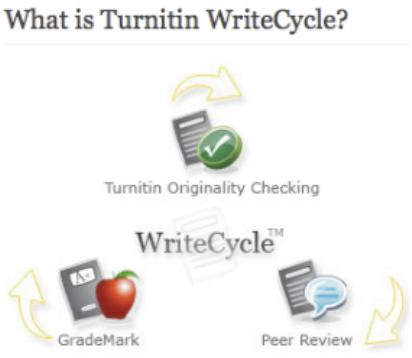
`http://www.theregister.co.uk/2008/10/28/google_settles_book_suit/`
`http://news.bbc.co.uk/2/hi/technology/8420876.stm`

Example: Turnitin

Fair Use Bolstered by Student-Cheating Detection Service

By David Kravets ✉ April 17, 2009 | 3:05 pm | Categories: Copyrights and Patents

A federal appeals court granted a boost to fair use advocates Friday when it ruled that an online cheating-detection service storing thousands of student essays did not violate the intellectual property rights of the essayists.



Students who claimed Turnitin.com breached their copyrights because it placed their works in its database brought the lawsuit. The site compares new essays submitted by teachers with a database of other essays to determine whether plagiarism was at work.

The E-Commerce and Tech Law Blog eloquently provides the nuts and bolts of the decision by the 4th U.S. Circuit Court of Appeals:

> The court stepped through the fair use analysis, dropping positive notes here (commercial uses can be fair uses), here (a use can be transformative 'in function or purpose without altering or actually adding to the original work,' citing Perfect 10 Inc. v. Amazon.com Inc.), and here (fact that turnitin.com used the entirety of the plaintiff's work did not preclude finding of fair use). And it turned back a lot of other, small-bore challenges to the district court's fair use finding.

Some 6,000 educational institutions in about 90 countries use the California-based cheating-detection service.

`http://www.wired.com/threatlevel/2009/04/fair-use-bolste/`

- plagiarism detection service
- universities subscribe for a fee
- assignments compared with each other, with previous assignments, and with Internet sources
- students sue Turnitin for copyright violation
- court rules fair use (2009)

Legal Immunity

- some organizations cannot be sued for copyright infringement resulting from the actions of their users: safe harbor
- service providers
- search engines
- Internet Archive

Topics

File Sharing

- increase in file sharing also increased copyright violations
- centralized networks: Napster, Kazaa, ...
- distributed networks: BitTorrent (requires search engine)
- file hosting services: Rapidshare, Megaupload, ...

File Sharing Debates

- file sharing also has legal uses
- courts decide that services are responsible for preventing large scale copyright violations
- are damage assessments realistic?
- how to distribute collected fines?

Example: Betamax

- Universal film studios sue Sony
  over the Betamax video recorder (1970):
  "this device can be used to violate copyrights“
- court: "there are also legal uses"

Example: The Pirate Bay

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26 November 2010 Last updated at 14:06

Pirate Bay founders lose appeal

Three founders of The Pirate Bay have lost an appeal against a conviction for illegally sharing copyrighted content.

The site has become notorious for hosting links to pirated music, movies and games

The Swedish appeals court upheld the 2009 ruling against the site's founders which saw them sentenced to a year in jail and heavily fined.

The ruling reduces the sentences the men face but increases fines to 46m crowns (£4.1m).

Three of The Pirate Bay's four founders were in court for the verdict. The other was too ill to attend.

The original verdict on Peter Sunde, Fredrik Neij, Gottfrid Svartholm Warg and Carl Lundstrom was handed down in April 2009 following a lengthy trial.

Lawyers acting for music labels and movie studios alleged that via The Pirate Bay, the four men helped people circumvent copyright controls.

The founders defended themselves by saying that The Pirate Bay did not host any pirated material directly.

The appeal court ruling will see Mr Neij serve a 10 month sentence; Mr Sunde eight months and Mr Lundstrom four months. Once Mr Svartholm Warg is fit his "criminal liability" will be tested by the appeals court.

Related Stories

- Pirate Bay founders back in court
- Attacks target recording industry
- Pirate Bay founding body disbands

- TPB: BitTorrent search site
- founders sentenced to
  4-10 months jail
  and 6.5 million $ compensation
  (2009-2010)
- is it any different from Google?

http://www.bbc.co.uk/news/technology-11847200
https://torrentfreak.com/google-defends-hotfile-and-megaupload-in-court-120319/

Example: The Pirate Bay

BBC News Sport Weather Travel iPlayer TV Ra

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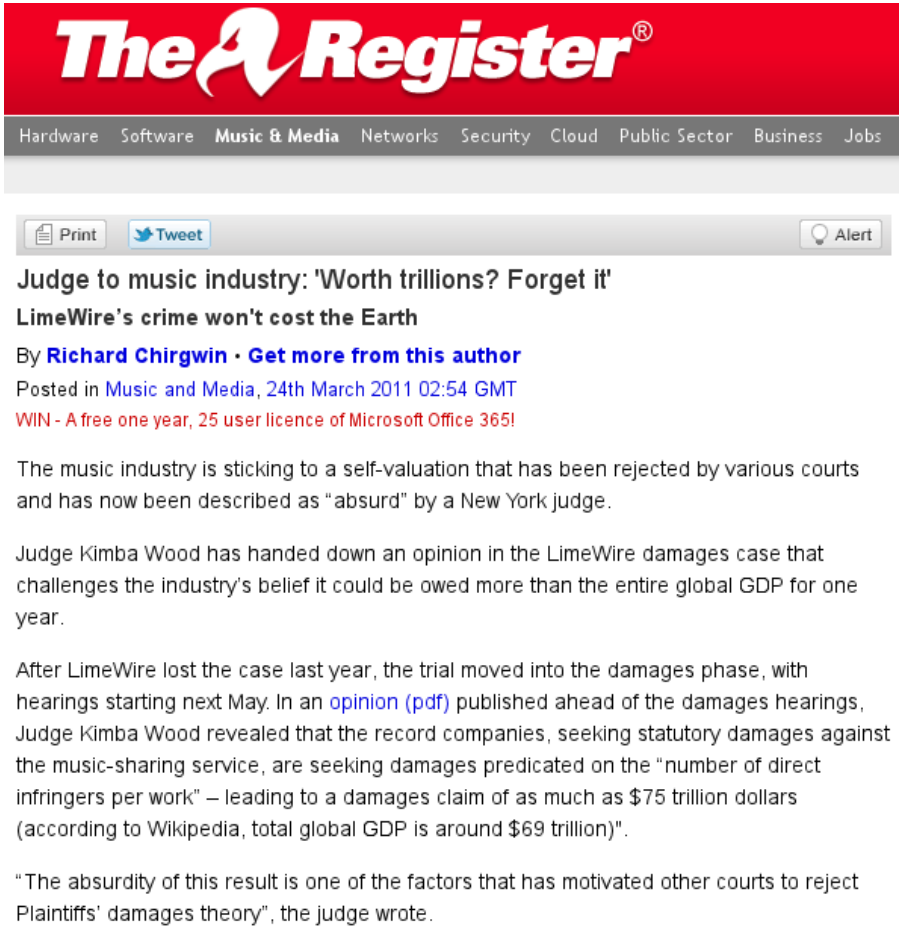
`http://www.bbc.co.uk/news/technology-11847200`
`https://torrentfreak.com/google-defends-hotfile-and-megaupload-in-court-120319/`

Example: LimeWire



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Judge to music industry: 'Worth trillions? Forget it'

LimeWire's crime won't cost the Earth

By **Richard Chirgwin** · **Get more from this author**

Posted in Music and Media, 24th March 2011 02:54 GMT

WIN - A free one year, 25 user licence of Microsoft Office 365!

The music industry is sticking to a self-valuation that has been rejected by various courts and has now been described as "absurd" by a New York judge.

Judge Kimba Wood has handed down an opinion in the LimeWire damages case that challenges the industry's belief it could be owed more than the entire global GDP for one year.

After LimeWire lost the case last year, the trial moved into the damages phase, with hearings starting next May. In an opinion (pdf) published ahead of the damages hearings, Judge Kimba Wood revealed that the record companies, seeking statutory damages against the music-sharing service, are seeking damages predicated on the "number of direct infringers per work" – leading to a damages claim of as much as $75 trillion dollars (according to Wikipedia, total global GDP is around $69 trillion)".

"The absurdity of this result is one of the factors that has motivated other courts to reject Plaintiffs' damages theory", the judge wrote.

- in the LimeWire case, the music industry demands 75 trillion $ in damages
- judge finds the amount "absurd" (2011)

`http://www.theregister.co.uk/2011/03/24/judge_slaps_music_biz/`

DRM

- Digital Rights Management
- enforcing copying and distribution rules using technology
- region protection in DVDs
- copy protection in CDs
- transfer prevention on digital files
- supported by “anticircumvention” clauses in recent copyright laws

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DRM Debates

- regarding consumer rights
- regarding reverse engineering
- technically, is DRM really effective?

Example: Adobe vs Sklyarov

InformationToday
Volume 18, Issue 10 — November 2001

• Legal Issues •

The Case of Dmitry Sklyarov

This is the first criminal lawsuit under the Digital Millennium Copyright Act

by Stephanie Ardito

Some of us who regularly write about intellectual property issues jokingly refer to publishers as the "copyright police," and contemplate being thrown into "copyright jail" for "violating" fair-use laws. Despite this imagined scenario, I never *really* expected that a civilian would be arrested and criminally prosecuted by the U.S. government.

Leading Up to Action, Arrest

On July 16, 2001, Dmitry Sklyarov, a Russian programmer, was arrested by the FBI as the copyright holder of a software program that circumvents the technology that protects against the unauthorized copying of Adobe Systems' eBook format. Sklyarov's arrest was preceded by several events. On June 22, his company, ElcomSoft (http://www.elcomsoft.com), posted a press release announcing the sale of a software program called Advanced eBook Processor (AEBPR), which removes encryption coding from Adobe Acrobat PDF files and Adobe Acrobat eBook Reader software. In part, the press release stated:

Advanced eBook Processor lets users make backup copies of eBooks that are protected with passwords, security plug-ins, various DRM (Digital Rights Management) schemes like EBX and WebBuy, enabling them to be readable with any PDF viewer, without additional plug-ins. In addition, the program makes it easy to decrypt eBooks and load them onto PalmPilots and other small, portable devices. This gives users—especially users who read on airplanes or in hotels—a more convenient option than using larger notebooks with limited battery power to read their eBooks.

`http://www.infotoday.com/it/nov01/ardito.htm`

Example: Adobe vs Sklyarov

- Sklyarov develops a software that removes password protection from PDF e-books
- his company Elcomsoft sells this software
- Sklyarov is arrested when he visits USA (2001)
- Adobe and the Department of Justice sue Sklyarov and Elcomsoft
- due to public reaction, the case against Sklyarov gets dropped
- the case against Elcomsoft ends in acquittal (2002)
- fair use? (backup copy)
- first sale?

Example: Adobe vs Sklyarov

- Sklyarov develops a software that removes password protection from PDF e-books
- his company Elcomsoft sells this software
- Sklyarov is arrested when he visits USA (2001)
- Adobe and the Department of Justice sue Sklyarov and Elcomsoft
- due to public reaction, the case against Sklyarov gets dropped
- the case against Elcomsoft ends in acquittal (2002)

- fair use? (backup copy)
- first sale?

Example: Jon Johansen

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January 8, 2003 4:39 PM PST

Norway piracy case brings activists hope

By Lisa M. Bowman
Staff Writer, CNET News

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Internet and technology activists are hoping the acquittal of Norwegian programmer Jon Johansen in a digital piracy case signals a change in attitudes about copyright in the digital age.

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"It feels a bit like the tide is turning in these copyright cases," said Cindy Cohn, an attorney with the Electronic Frontier Foundation. "It really feels like there is some sanity creeping in." The EFF and others have been concerned that digital copyright law hampers legitimate research into encryption and other technological matters and stifles consumers' rights.

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- Jon Johansen develops a software that breaks region protection on DVDs to watch them on Linux
- Paramount, Universal, and MGM sue
- Johansen is acquitted (2003)
- Johansen - Apple: buying music from iTunes (2005)

http://news.cnet.com/Norway-piracy-case-brings-activists-hope/2100-1025_3-979769.html
http://news.cnet.com/DVD-Jon-reopens-iTunes-back-door/2100-1027_3-5630703.html

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Example: Sony music CDs

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Last Updated: Monday, 21 November 2005, 15:04 GMT

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Sony's long-term rootkit CD woes

Internet professor Michael Geist explains why Sony's rootkit problems have significant long-term implications for the industry.

Cyndi Lauper and Ray Charles are on the full list of XCP CDs

"Sony BMG, the world's second largest record label, has for the past three weeks been the subject of a corporate embarrassment that rivals earlier public relations nightmares involving tampered Tylenol and contaminated Perrier.

While in the short-term one of the world's best-known brands has suffered enormous damage, the longer-term implications are even more significant - a fundamental re-thinking of policies toward digital locks known as technological protection measures (TPMs).

The Sony case started innocently enough with a Halloween day blog posting by Mark Russinovich, an intrepid computer security researcher.

Mr Russinovich discovered his own tale of horror - Sony was using a copy-protection TPM on some of its CDs that quietly installed a software program known as a "rootkit" on users' computers.

- Sony music CDs install a copy protection program without telling the user
- Sony apologizes, recalls CDs (2005)
- the copy protection program turns out to be stolen from open source projects

http://news.bbc.co.uk/2/hi/technology/4456970.stm
http://www.theregister.co.uk/2005/11/18/sony_copyright_infringement/

Example: Sony music CDs

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`http://news.bbc.co.uk/2/hi/technology/4456970.stm`
`http://www.theregister.co.uk/2005/11/18/sony_copyright_infringement/`

Example: MPAA

ELECTRONIC FRONTIER FOUNDATION
DEFENDING YOUR RIGHTS IN THE DIGITAL WORLD

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JANUARY 24, 2006 | BY FRED VON LOHMANN

MPAA: Copying Movies OK for Our Families, Not Yours

The Los Angeles Times reports that the Motion Picture Association of America (MPAA) made unauthorized copies of a new documentary, *This Film Not Yet Rated*, that is critical of the organization.

The copies were apparently made when the film was submitted for an MPAA rating. The film got an NC-17, a somewhat ironic outcome for a film that exposes the unfairness of the MPAA ratings system.

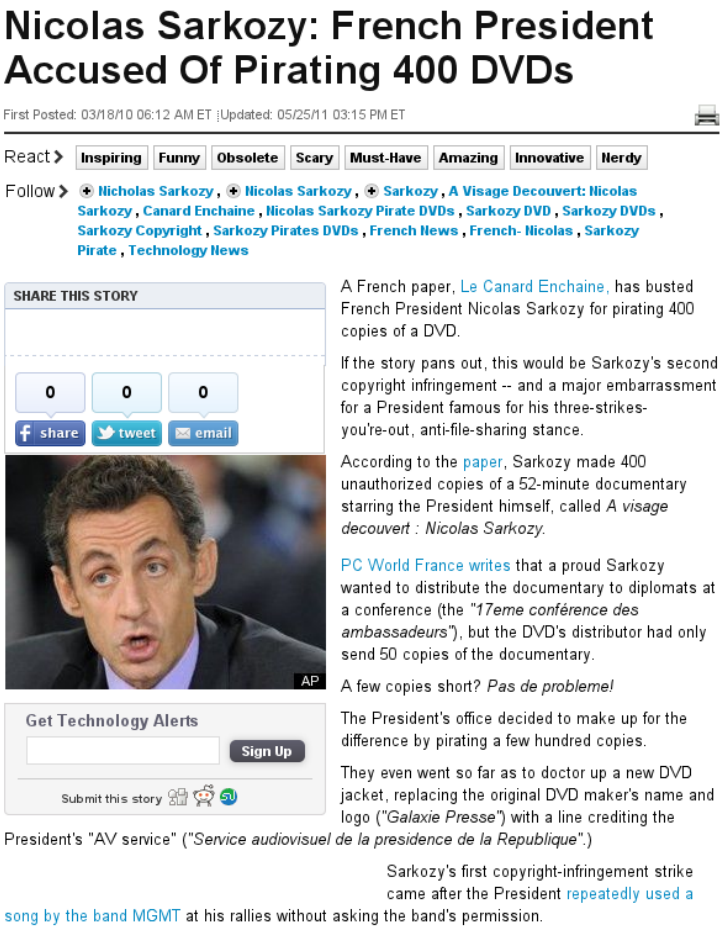
The MPAA made the copies because they "were concerned about the raters and their families," according to Kori Bernards, the MPAA's vice president for corporate communications. The identities of the MPAA ratings board have been a closely guarded secret, at least until *This Film Not Yet Rated* did some amateur detective work to sniff them out. Now that the word is out, the MPAA apparently is afraid for "their families"?

So copying movies is OK when it's done to protect the families of the MPAA ratings board, but not OK when it's done to protect the families of movie fans. After all, the MPAA and its members have said it's "theft" and "piracy" for you to copy your own DVDs, whether to make a back-up copy to protect your DVDs from being scratched by your toddler, to edit out the annoying, unskippable commercials that open many DVDs, or to skip strong language, nudity, and violence that you think is inappropriate for your family.

- MPAA copies the movie "This Film Is Not Yet Rated" without permission and distributes it to its employees (2004)

`https://www.eff.org/deeplinks/2006/01/mpaa-copying-movies-ok-our-families-not-yours`

Example: Nicolas Sarkozy



Nicolas Sarkozy: French President Accused Of Pirating 400 DVDs

First Posted: 03/18/10 06:12 AM ET ¦Updated: 05/25/11 03:15 PM ET

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A French paper, Le Canard Enchaine, has busted French President Nicolas Sarkozy for pirating 400 copies of a DVD.

If the story pans out, this would be Sarkozy's second copyright infringement -- and a major embarrassment for a President famous for his three-strikes-you're-out, anti-file-sharing stance.

According to the paper, Sarkozy made 400 unauthorized copies of a 52-minute documentary starring the President himself, called *A visage decouvert : Nicolas Sarkozy*.

PC World France writes that a proud Sarkozy wanted to distribute the documentary to diplomats at a conference (the *"17eme conférence des ambassadeurs"*), but the DVD's distributor had only send 50 copies of the documentary.

A few copies short? *Pas de probleme!*

The President's office decided to make up for the difference by pirating a few hundred copies.

They even went so far as to doctor up a new DVD jacket, replacing the original DVD maker's name and logo (*"Galaxie Presse"*) with a line crediting the President's "AV service" (*"Service audiovisuel de la presidence de la Republique"*.)

Sarkozy's first copyright-infringement strike came after the President repeatedly used a song by the band MGMT at his rallies without asking the band's permission.

- Sarkozy's party uses a song by the band MGMT without permission in election campaigns (2009)
- Presidential Office prints a documentary about Sarkozy on copy DVDs (2009)

`http://www.huffingtonpost.com/2009/10/08/nicolas-sarkozy-french-pr_n_313723.html`

Topics

Product or Service

- is software a product or a service?
- mass sales $\rightarrow$ product
- personal sales $\rightarrow$ service

- if mass sales: make sure product is safe $\rightarrow$ strict liability
- the risk costs can be distributed in sales

- if personal sales: not in circulation $\rightarrow$ neglect
- the risk costs cannot be distributed

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Proprietary Model

- source code: trade secret
- copying and distribution of compiled code: copyright
- use of program: license agreement

- what the consumer buys is not the program,
  it's the license to use the program

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End User License Agreements

- what if the consumer doesn't agree? (preinstalled software)
- activation, hardware changes
- reverse engineering: none, or as much as local law permits
- no warranty
- no liability

Free/Open Source Model

- ability to customize
- speedier updates
- protection from problems of the vendor

GNU General Public License - GPL

- use: no restriction
- distribute: no restriction (including selling)
- modify: no restriction
- distribute modified: along with source code
- no warranty
- no liability

Other Free/Open Licenses

- BSD: any license on the modified software
- Lesser GPL, Apache, Mozilla, ...
- dual licensing: MySQL, Qt
- for documentation: GNU Free Documentation License
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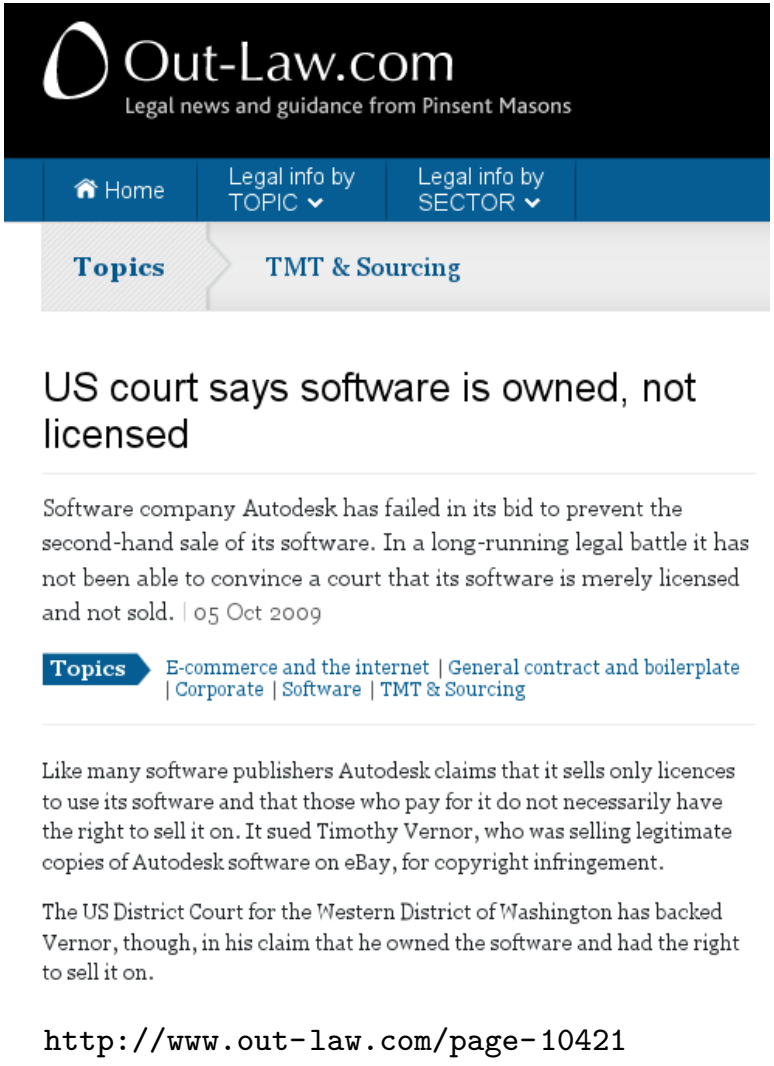
Open Source Initiative (OSI)

- dağıtım özgürlüğü
- kaynak kodun açıklığı
- değişikliklere izin
- özgün kaynak kodunun bütünlüğü
- kişi ve gruplara karşı ayrımcılık yapılmaması
- iş alanlarına karşı ayrımcılık yapılmaması
- lisansın dağıtımı
- lisansın ürüne özel olmaması
- lisansın başka yazılımları kısıtlamaması
- lisansın teknolojiden bağımsız olması

Example: First sale



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Topics > TMT & Sourcing

US court says software is owned, not licensed

Software company Autodesk has failed in its bid to prevent the second-hand sale of its software. In a long-running legal battle it has not been able to convince a court that its software is merely licensed and not sold. | 05 Oct 2009

Topics: E-commerce and the internet | General contract and boilerplate | Corporate | Software | TMT & Sourcing

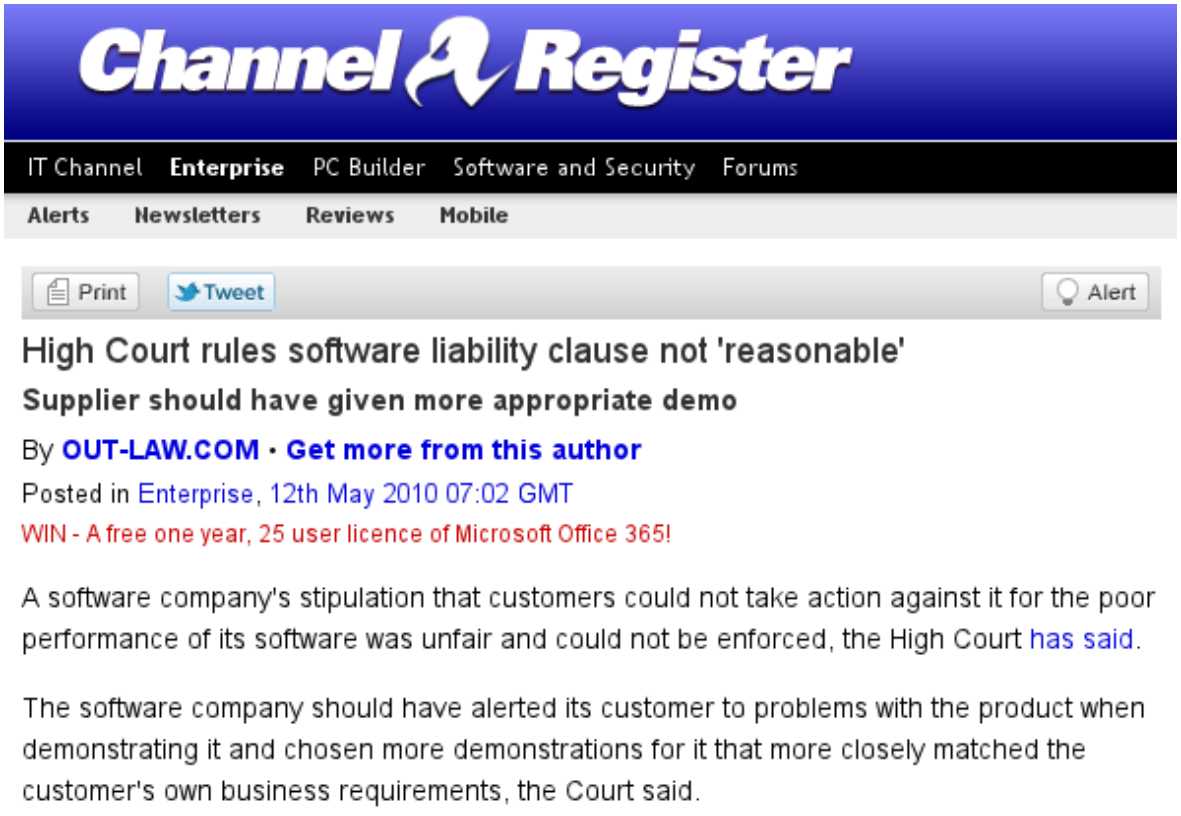
Like many software publishers Autodesk claims that it sells only licences to use its software and that those who pay for it do not necessarily have the right to sell it on. It sued Timothy Vernor, who was selling legitimate copies of Autodesk software on eBay, for copyright infringement.

The US District Court for the Western District of Washington has backed Vernor, though, in his claim that he owned the software and had the right to sell it on.

`http://www.out-law.com/page-10421`

- a US court decides that software is sold, not licensed (2009)

Example: Liability



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High Court rules software liability clause not 'reasonable'

Supplier should have given more appropriate demo

By **OUT-LAW.COM** · **Get more from this author**

Posted in Enterprise, 12th May 2010 07:02 GMT

WIN - A free one year, 25 user licence of Microsoft Office 365!

A software company's stipulation that customers could not take action against it for the poor performance of its software was unfair and could not be enforced, the High Court has said.

The software company should have alerted its customer to problems with the product when demonstrating it and chosen more demonstrations for it that more closely matched the customer's own business requirements, the Court said.

- British High Court rejects that
  software cannot be sued for poor performance (2010)

`http://www.channelregister.co.uk/2010/05/12/red_sky_liability_ruling/`

Topics

Patents

- patent protection is for inventions
- *new*: advancing the current state of the art
- *functional*: applicable in industry
- *not obvious*
- even if someone else invents it independently, they cannot use it
- clients can also be sued for infringement

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- legal monopoly
- protection duration: around 20 years
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- just because the patent office granted the patent,
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- it is still a controversial topic whether software could be patented
- “software is mathematics”

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Example: Benson

- Benson applies for a patent for an algorithm that converts BCD numbers into binary numbers
- patent office rejects, Benson sues
- court decides that this algorithm isn't patentable (1972)

Patent Problems

- patents granted although they should not be eligible
- using patents to stop competitors from using the idea
- holders can stop each other and block technology:
  patent pools
- "fair, reasonable, and non-discriminatory" licensing
  for critical patents (FRAND)
- getting patents just to sue for infringement (patent trolling)
- keeping the patent hidden or not enforcing it
  until the technology becomes widely used

Patent Problems

- patents are now used as weapons
- many companies getting patents for protection
- the system has diverged from the original goal of promoting innovation
- on the contrary, it hinders start-ups and small companies

Example: Amazon - One-click shopping

- Amazon gets a patent for one-click shopping (1999)
- sues Barnes and Noble
- patent office re-examines the patent, rejects parts of it (2007)
- accepts modified patent application (2010)
- Bilski case: Appeals Court makes it more difficult to get business process patents (2008)

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1725009

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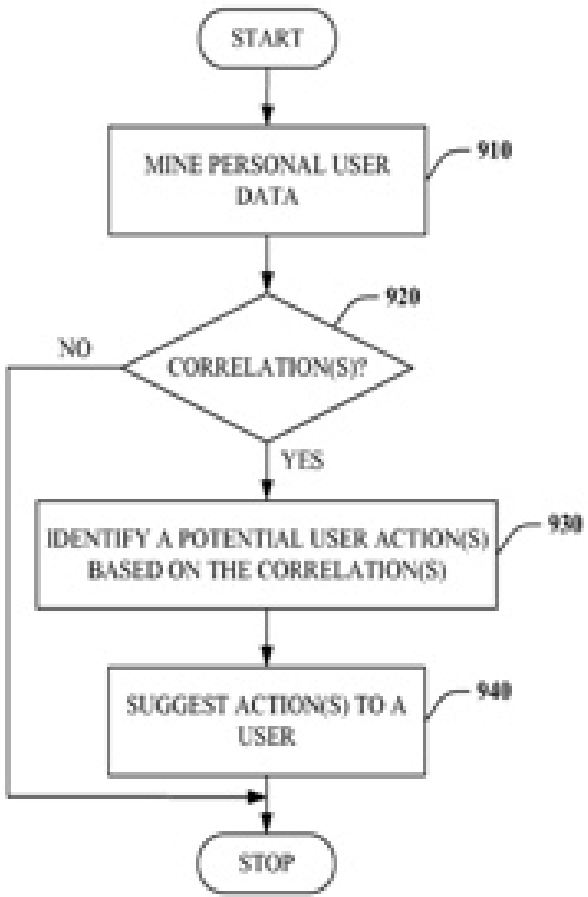
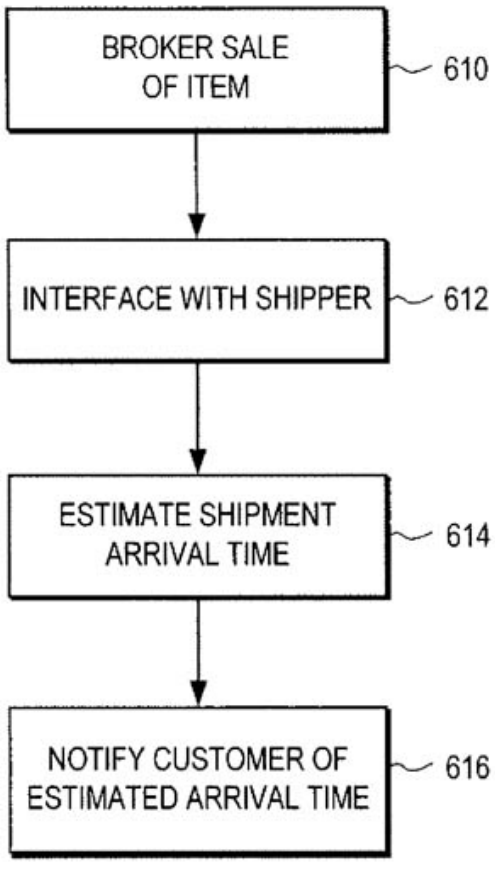
Example: Microsoft - Personal data mining



- Microsoft: personal data mining (2010)
- Microsoft buys 800 patents from AOL (2012)

http://techflash.com/seattle/2010/02/gates_ozzie_other_microsoft_execs_patent_personal_data_mining.html
http://www.theregister.co.uk/2012/04/09/aol_microsoft_patent_deal/

Example: Google - Shipment arrival estimation



- Google: when will the shipment arrive? (2011)

http://www.theregister.co.uk/2011/08/12/google_customer_notification_patent/

Example: Apple vs Samsung - Google

PCWorld » Blogs » Today @ PCWorld

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TODAY @ PCWORLD

Apple to Samsung: Don't Make Thin or Rectangular Tablets or Smartphones

By Melanie Pinola, PCWorld Dec 5, 2011 8:50 AM

Apple proffers design advice on how Samsung could avoid stepping on Apple's design patent toes, in a legal brief filed as part of its ongoing patent infringement lawsuit against its competitor.

Apple iPad

Some of the alternative design options Apple has suggested for Samsung seem so farcical you'd think you were reading *The Onion*: Don't make tablets or smartphones with overall rectangular shapes or rounded corners, make tablets with front surfaces that aren't completely flat, try cluttering the appearance of the devices, and more.

When Apple sued Samsung in April, the company claimed Samsung had "slavishly" copied the distinctive designs of the iPhone and iPad, thereby violating Apple intellectual property rights. In its rebuttal, Samsung argues that there are only so many ways you could design devices like the Galaxy S and Galaxy Tab.

Apple obviously doesn't think so. To defend its claim that Samsung had other design options, Apple had to provide examples of design alternatives.

- Apple stops a Samsung tablet from being sold in Germany (2011)
- Motorola stops Apple users from using "push email" in Germany (2012)
- HTC sues Apple with patents obtained from Google (2011)

`https://www.pcworld.com/article/245493/apple_to_samsung_dont_make_thin_or_rectangular_tablets_or_smartphones.html`
`http://www.theregister.co.uk/2012/02/24/apple_patent_motorola/`
`http://www.bloomberg.com/news/2011-09-07/htc-sues-apple-alleging-infringement-of-four-u-s-patents.html`

Example: Microsoft vs Eolas

The Register®

Hardware **Software** Music & Media Networks Security Cloud Public Sector Business Jobs

Operating Systems Applications Developer Microbite

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Microsoft settles eight year patent case with Eolas

Undisclosed payment over rights violation claim

By **OUT-LAW.COM · Get more from this author**

Posted in Software, 31st August 2007 15:56 GMT

WIN - A free one year, 25 user licence of Microsoft Office 365!

Microsoft has settled a long-running patent infringement suit with Eolas and the University of California in a case which has been running since 1999. Microsoft will make an undisclosed payment to Eolas.

Eolas had claimed that Microsoft's internet browser Internet Explorer violated a patent held by it. The dispute centred on the embedding of items within a web page. Microsoft has since changed that element of its browser.

Eolas won $521m in 2003 but Microsoft appealed and won the right to a retrial. It said that it expected the damages to be changed.

- Eolas patent: running applications from within browser
- sues Microsoft (1999)
- settles out-of-court (2007)
- Eolas later sues Apple ve Google (2010)
- loses (2012)

http://www.theregister.co.uk/2007/08/31/microsoft_eolas_settlement/
http://www.wired.com/threatlevel/2012/02/interactive-web-patent/

Example: Microsoft vs Eolas

The Register®

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Operating Systems Applications Developer Microbite

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`http://www.theregister.co.uk/2007/08/31/microsoft_eolas_settlement/`
`http://www.wired.com/threatlevel/2012/02/interactive-web-patent/`

Example: Compuserve - GIF image format

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References

Required Reading: Tavani

- Chapter 8: Intellectual Property Disputes in Cyberspace