

Module CS5052NI

Professional Issues, Ethics and Computer Law

2023

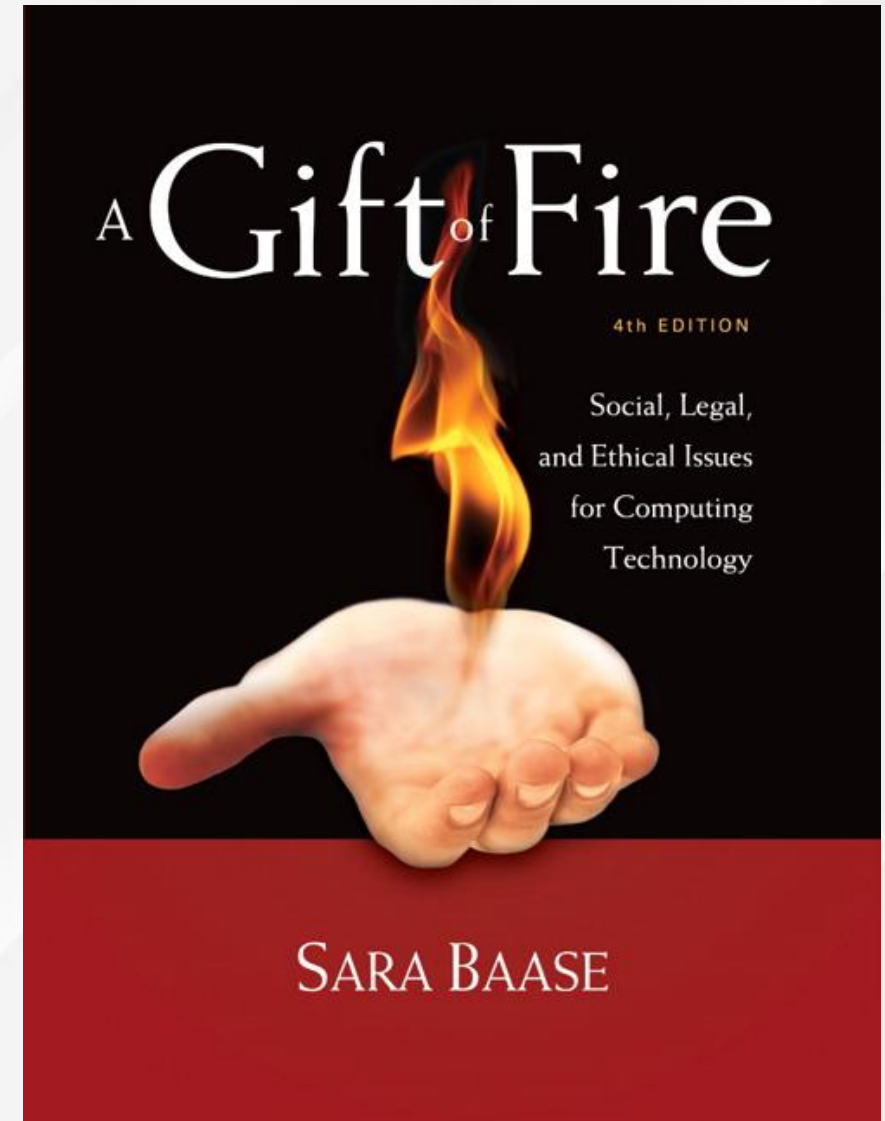
A Gift of Fire

Fifth edition

Sara Baase

Chapter 4:

Intellectual Property



Agenda

- What we covered last week
 - Freedom of Speech
- What we will cover this week
 - Intellectual Property (IP), Patent, Copyright, Trademark
 - Intellectual Property in Nepal
 - Principles, Laws, and Cases
 - Search Engines and Online Libraries
 - Free Software
 - Patents for Inventions in Software



Intellectual Property (IP)

- The WIPO (World Intellectual Property Organization) defines IP as:
- Creations of the mind: inventions, literary and artistic works; and symbols, names and images used in commerce.
 - Intangible creative work, not its physical form
 - Intellectual Property (IP) is protected by Patents, Copyright and Trademarks laws which enable people to earn recognition or financial benefit from what they invent or create.



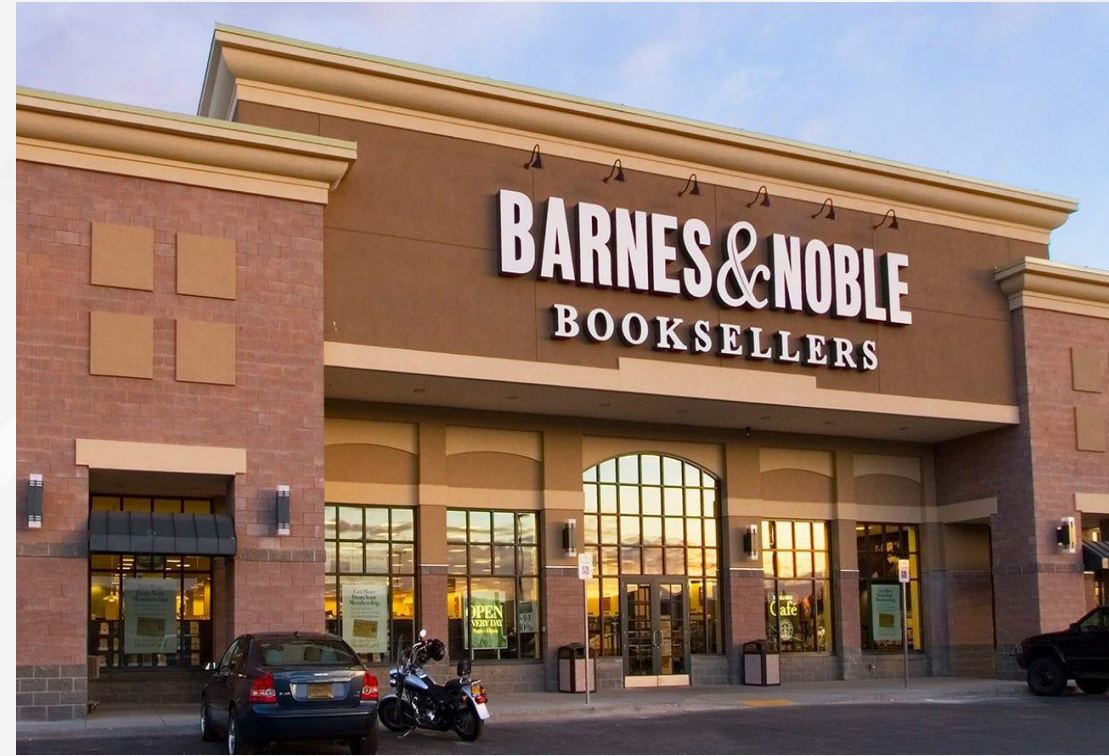
Patent



- Patent is an exclusive right granted for an invention.
- Patent provides the Patent Owner with the right to decide how - or whether - the invention can be used by others.
- In exchange for this right, the Patent Owner makes technical information about the invention publicly available in the published **Patent Document**.
- New Constitution -2015 According to Article 25:“*Every citizen shall, subject to law, have the right to acquire, own, sell, dispose, acquire business profits from, and otherwise deal with, property*”

What could go wrong if a company doesn't have a patent?

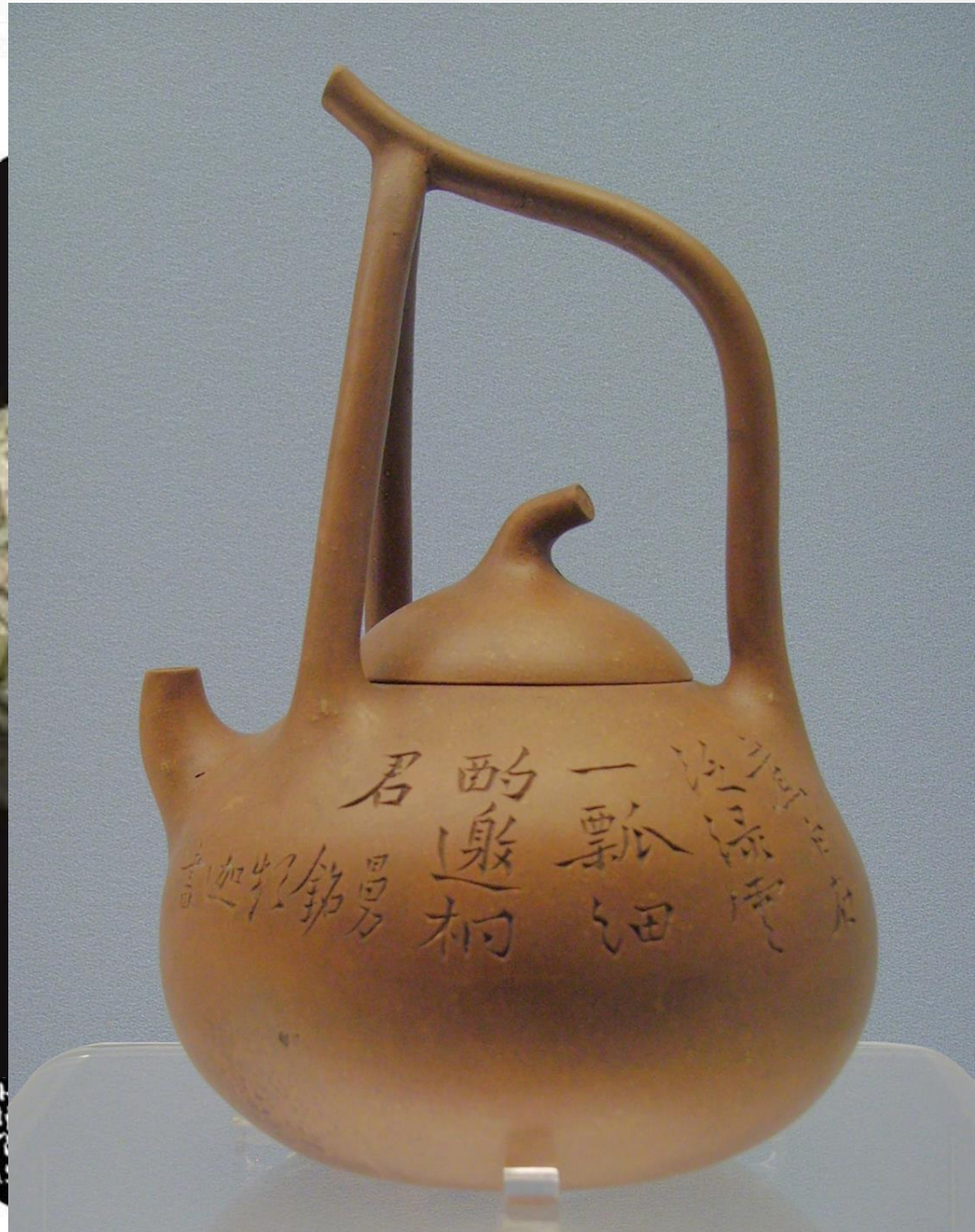
- Barnes & Noble, bookseller, started offering a **“one-click” process for online purchases**, Amazon sued for patent infringement.
- Barnes & Noble suspended its use of the process, creating a competitive advantage for Amazon. Today, Amazon dominates in retail, while Barnes & Noble struggles to survive.



Trademark

- **A sign capable of distinguishing the goods or services of one enterprise from those of other enterprises.**
- Trademarks date back to ancient times when artisans used to put their signature or "mark" on their products.
- Business and product owners file for a Trademark.





Trademark

- It protects a name, word, slogan, symbol, design and/or image identifying a business or brand.

यो देशको शिर
उच्च राख्दै...

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Copyright



- Legal term used to describe the rights that creators have over their literary and artistic works.
- Copyright range from books, music, paintings, sculpture and films, to computer programs, databases, advertisements, maps and technical drawings
- While an idea cannot be Copyrighted, the tangible form of an idea (end product) can be.
- This includes original works of authorship, photographs, sculptures, choreography, architectural works, sound recordings, motion pictures and other creative works.
- Copyright can be sought for by authors, artists, choreographers, architects and other creative professionals.

Intellectual Property in Nepal

- In Nepalese context, Intellectual Property is also one form of property.
 - There are four different types of IP rights such as: **Patent**, **Design**, **Trademark** and **Copyright**.
 - **Patent**, **Design** and **Trademark** is protected under the one single legislation “**Nepal Patent, Design and Trademark Act, 1965**” (NPA) and **Copyright** is protected by the “**Copyright Act, 2002**”.
- <https://www.wipo.int/edocs/lexdocs/laws/en/np/np004en.pdf>
 - <http://www.pioneerlaw.com/services/intellectual-property/>
 - <http://ipnepal.com.np/patent-registration-protection-in-nepal/>

Intellectual Property in Nepal

- The total period of registered Trademark is. **seven years from first registration and seven years from first renewed and total 14 years**
- Trademark shall be renewed within **35 days from date of expiry** having paid the fee mention in schedule.
- What will happen after the 14 years is not addressed in the Act. Act is silent in this regard.



Intellectual Property in Nepal

- NPA has provided that the duration of the Patent shall be seven years initially, which shall be renewed for seven years for another two periods.
- Patent shall be renewing within 35 days from date of expiry having paid the fee mention in schedule.
- It means Patentee has overall 21 years duration period if he / she renewed after the first initial period two times.

Intellectual Property in Nepal

- Copyright protection is generally available for life plus a postmortem period of 50 years.



- However, this period of protection varies with the nature of the respective works like joint works, works made for hire, works of anonymous, the photographic works and the work published after the death of the authors.

Trademark Registration in Nepal

- **Right On Trademark**

- Any body may have a right on any trademark of his trade or business under the act having it **registered in the Department.**
- Nobody shall use or copy any trademark in a way of manipulating the people in general **without a written consent of person in whose name the trademark is registered.**
- **Ownership of a trademark can be transferred to other with a permission of the department.**

Copyright Registration in Nepal

- **Protection of Copyright:**

- Registration of Copyright is **not mandatory** in Nepal, any work is protectable under the Copyright Act 2059 B.S.,
- However, registration of copyright will be fruitful to proof of copyright against the possible infringement, **piracy** in future.
- Due to the registration of copyright, it is sufficient to enter any licensing, agreement with others in order to full enjoy of exclusive right of copyright.

Chhakka Panja 4's TikTok leak: Unpreparedness of makers and regulators is exposed.

- On March 3, two Nepali most awaited films **Chhakka Panja 4** and **Chhadke 2.0**—two hyped projects of the Nepali film industry—were released. As soon as the films were released nationwide, around 15-minute long clips of both films—including some milestones of the plots—started spreading all over social media, especially on TikTok and YouTube.
- Saying this breached the copyrights, the digital rights holder of Chhakka Panja 4, OSR Digital, even filed a complaint **with Nepal Police Cyber Bureau**, to prevent the spread of clips. But if you scroll TikTok even today, you can frequently see the various clips from Chhakka Panja 4 and Chhadke 2.0.
- Stakeholders say legal reforms—including the implementation of existing laws and the introduction of new ones—are a must to control such incidents in the future.



Chhakka Panja 4's TikTok leak: Unpreparedness of makers and regulators is exposed.

- As per Nepali laws, the pirates would be punished under the **Copyright Act**; if the crime is committed on digital platforms, **the Electronic Transactions Act** also applies.
 - **Under the Copyright Act**, the offender shall be punished with a **fine of Rs 10,000 to Rs 100,000 or six months imprisonment or both as per the nature of the infringement.**
 - Similarly, under the **Electronic Transactions Act**, the offender shall be liable to the **punishment of imprisonment not exceeding three years or with a fine not exceeding Rs 2,00,000 or both.**
- But, the implementation of copyright-related laws is miserable. According to the District Police Range of Kathmandu, in the **past eight months since the beginning of the current fiscal year**, **only one complaint related to copyright violation has been registered.**
- In the previous fiscal year 2021/22, there were **two complaints registered.** In the fiscal year 2020/21, **there was only one case.**

Copyright Registration in Nepal

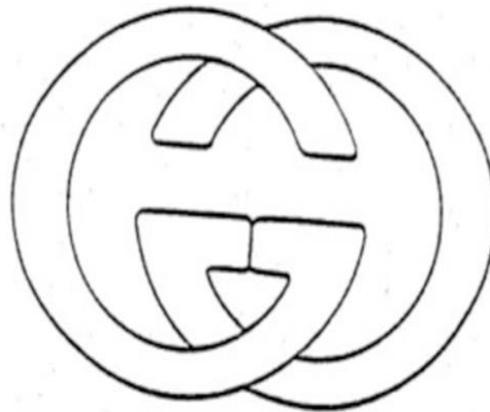
- **Protectable subject matter:**
 - **Literary-** Book, pamphlet, article, thesis, lectures, computer programmed etc.
 - **Artistic-** Architectural design, photography, painting, sculpture, woodcarving, lithography, work of applied art, illustration, map, plan etc.
 - **Musical-** Musical notation with or without words, sound recording etc.
 - **Dramatic-** Drama, dramatic music, dumb show, performance etc.
- **Non- protectable subject matter:**
 - Any thought, religion, news, method of operation, concept, principle, court judgment, administrative decision, folksong, folktale, proverb and general data even though such matters are expressed or explained or interpreted or included in any work.
- **Time frame to registration of Copyright:**
 - Normally 5 to 35 days.

Principles, Laws, and Cases

- U.S Copyright Law holder following exclusive rights:
 - The right to reproduce and make copies of an original work;
 - The right to prepare derivative works based on the original work;
 - The right to distribute copies to the public by sale or another form of transfer, such as rental or lending;
 - The right to publicly perform the work;
 - The right to publicly display the work, and
 - The right to perform sound recordings publicly through digital audio transmission.

Gucci vs Guess

GUCCI



Principles, Laws, and Cases

Challenges of New Technology

- Digital technology and the Internet make Copyright infringement easier and cheaper.
- New compression technologies make copying large files (e.g. Graphics, Video and Audio files) feasible.
- Search engines make finding material easier.
- Peer-to-peer technology makes transferring and sharing files easier.

Principles, Laws, and Cases

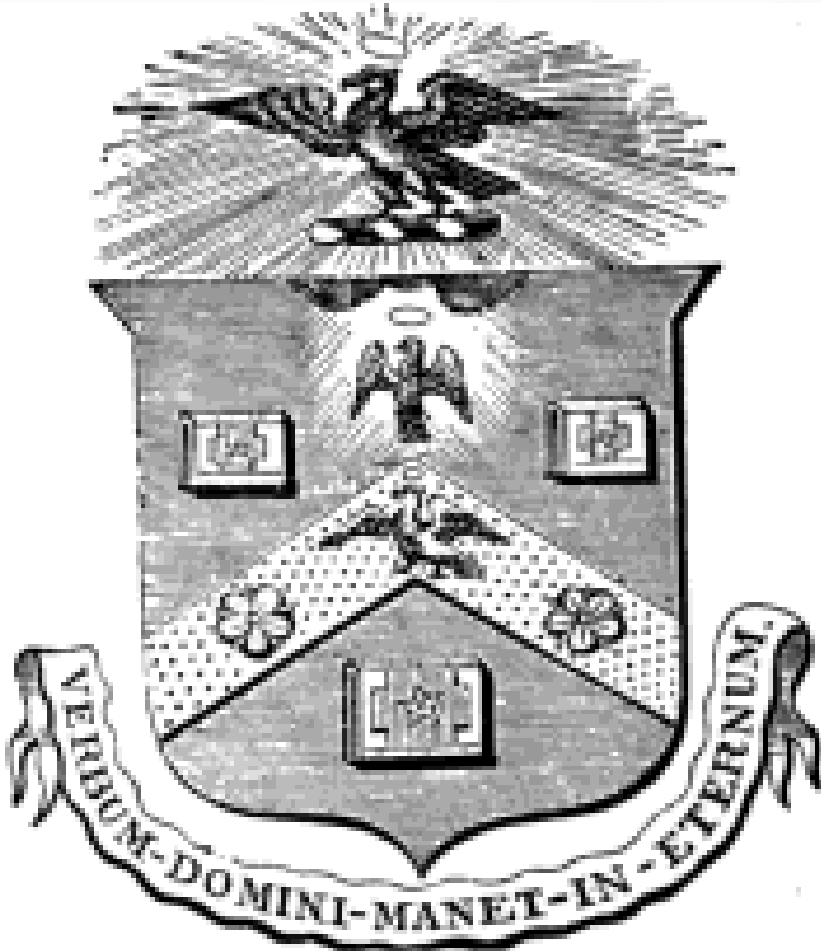
- **1790 first copyright law passed**
- **1909 Copyright Act of 1909** defined an **unauthorized copy** as a form that could be seen and read visually
- **1976 and 1980 copyright law revised** to include software and databases that exhibit "authorship" (original expression of ideas), included the "**Fair Use Doctrine**"
- **1982 high-volume** copying became a felony (Crime)

Principles, Laws, and Cases

Fair Use Doctrine

- Four factors considered
 - Purpose and nature of use – commercial (less likely) or nonprofit purposes
 - Nature of the copyrighted work
 - Amount and significance of portion used
 - Effect of use on potential market or value of copyright work (will it reduce sales)
- No single factor alone determines
- Not all factors given equal weight, varies by circumstance

Copyright law brief history



- The **Statute of Anne**, also known as the **Copyright Act 1710**
- The Parliament of Great Britain passed Law, to provide for copyright regulated by the government and courts, rather than by private parties.
- This Act introduced for the first time the concept of the author of a work being the owner of its copyright and laid out fixed terms of protection.

Copyright law brief history

- **1992 making multiple copies for commercial** advantage and private gain became a felony
- **1997 No Electronic Theft Act (NET Act)** made it a felony to willfully infringe copyright by reproducing or distributing one or more copies of copyrighted work with a total value of more than \$1,000 within a six-month period
- **1998 Digital Millennium Copyright Act (DMCA)** prohibits making, distributing or using tools to circumvent technological copyright protection systems and included protection from some copyright lawsuits
- **2005 Congress made it a felony to record a movie in a movie theater**

Ethical arguments about copying

- Copying or distributing a song or computer program does not decrease the use and enjoyment any other person gets from his or her copy.
- Copying can decrease the amount of money that the copyright owner earns.
- Copying enables users to try out products, benefiting the copyright owner by encouraging sales.
- Fair use guidelines are useful ethical guidelines.

The Associated Press vs. Fairey

- Famous street artist Shepard Fairey created the Hope poster during President Obama's first run for presidential election in 2008
- January 2009 the Associated Press as one shot by AP freelancer Mannie Garcia — with the AP demanding compensation for its use in Fairey's work.
- Fairey responded with the defense of fair use, claiming his work didn't reduce the value of the original photograph.
- The artist and the AP press came to a private settlement in January 2011, part of which included a split in the profits for the work.



Search Engines and Online Libraries

Search Engines

- A program that searches for and identifies items in a database that correspond to keywords or characters specified by the user, used especially for finding sites on the World Wide Web.
- Caching and displaying small excerpts is fair use
- Creating and displaying thumbnail images is fair use



Brussels court rules against Google in copyright case - Business - International Herald Tribune

- A group of **Belgian newspapers** claimed they lose revenue from subscription fees when Google displays headlines, photos, and excerpts from their news archives. A court in Brussels ruled that Google violated copyright laws by publishing links to stories from Belgian newspapers without permission.
- They won a lawsuit against Google in 2007. The Google was initially ordered to pay a fine of **€25,000, or \$32,600**, for each day it displayed content, in violation of copyright, from the publications in the suit.
- In response Google negotiated licensing agreements to copy and display headlines, excerpts, and photos. The fine was later reduced to paying €1 million a day for copyright violation and required Google to publish the judgment its home page.

Free Software

What is Free Software?

- Free Software is an idea advocated and supported by a large, loose-knit group of computer programmers who allow people to copy, use, and modify their software
- Free means freedom of use, not necessarily lack of cost.
- Open source - software distributed or made public in source code (readable and modifiable)

Should all software be free?

- The emotional argument goes like this: **“I put my sweat, my heart, my soul into this program. It comes from *me*, it's *mine*!”**
- The economic argument goes like this: **“I want to get rich, and if you don't allow me to get rich by programming, then I won't program. Everyone else is like me, so nobody will ever program. And then you'll be stuck with no programs at all!”**

ChatGPT

- AI chatbot auto-generative system created by **OpenAI** for online customer care created by **Sam Altman**.
- It is a pre-trained generative chat, which makes use of **(NLP) Natural Language Processing**.
- As far as we know, **Chat GPT for free straight from OpenAI's website**.
- In an interview Sam Altman said that **ChatGPT is a tool that is 'very much in human control.'** But he fears which human will control it.
- OpenAI doesn't offer any warranty or support for GPT, and it's up to users to make sure that how they use the model doesn't break any laws or rules.



ChatGPT

- The source of its data is **textbooks, websites, and various articles**, which it uses to model its own language for **responding to human interaction**. But there may be **ethical and legal implications** as to improve the service and fine-tune the model even further, it gathers more data on how humans communicate.
- OpenAI has released a pilot Chat GPT Plus subscription plan, **costing \$20 per month**. In January 21-22, some visitors spotted '**professional plan**' **pricing of \$42 per month**. The option was shown to **some registered users** and was not yet widely available.
- You gain added benefits of **priority access even in busy times, faster response times, and exclusive access to the latest features**. This may be particularly attractive, if you have been experiencing the Chat GPT capacity error, as of late.

Patents for Inventions in Software

Patent decisions, confusion, and consequences

- Patents protect inventions by giving the inventor a domination for a specified time period.
- Laws of nature and mathematical formulas cannot be patented.
- Obvious inventions or methods cannot be patented.

Apple v. Samsung 7year battle

- The patent battle started in 2011 and initially resulted in a \$1 billion ruling in Apple's favor. But it didn't end there. A series of appeals pushed the dispute to the Supreme Court and back,
- **“THIS CASE HAS ALWAYS BEEN ABOUT MORE THAN MONEY.”**
- The case revolved around a number of design and utility patents for basic functions of a smartphone, like tap to zoom and the home screen app grid. But while the fight was hashed out using specific patents, the battle was ultimately about whether Samsung copied Apple in the early days of smartphones to gain an edge. The jury decided that, in many ways, it had.
- Most recently, the verdict had been whittled down to \$539 million for Apple. Samsung filed to appeal that earlier this month. But the two companies were able to reach an agreement before it could be litigated again.

Patents for Inventions in Software

Patent trolls

- Also called **nonpracticing entity or nonproducing entity (NPE)**, derogatory term for a company, that uses portfolio of patents **not to produce products** but **solely to collect licensing fees or settlements on patent infringement from other companies.**
- The term patent troll came from trolls in Norwegian folktales, **who exact taxes from travelers passing over bridges.**
- Some companies accumulate thousands of technology patents but do not make any products.
- They license the patents to others and collect fees.

Patents for Inventions in Software

- The average cost of a patent infringement lawsuit is **\$2.8 million**, according to the American Intellectual Property Association.
- For example: **VirnetX sued Apple for infringing on patents related to virtual private network (VPN) technology** in 2010. VirnetX argued that **Apple's FaceTime and iMessage features infringed on its patents**, and the court ultimately agreed, awarding VirnetX \$502.6 million in damages.
- But the trend in recent years has been towards more restraining **patent laws and increased examination of patent lawsuit practices**. This is due to the fact that many patent trolls engage in abusive lawsuit practices, such as filing frivolous lawsuits or demanding overpriced settlement fees.

Case of Intellectual Ventures v. Capital One

- This court case was heard by the US Court of Appeals for the Federal Circuit in 2018. **Intellectual Ventures** is a well-known patent troll that has filed thousands of patent infringement lawsuits against companies over the years.
- Intellectual Ventures sued Capital One for infringing on patents related to **financial technology, such as mobile banking and online payments**. Capital One argued that the **patents were invalid** and that Intellectual Ventures was engaging in abusive lawsuit practices. The court ultimately ruled in favor of Capital One, finding that **the patents were indeed invalid and that Intellectual Ventures had engaged in abusive litigation practices**.
- This case was significant because it showed that **patent trolls can be defeated in court**, and it also highlighted the need for **patent reform to prevent abusive litigation practices**.

Patents for Inventions in Software

To patent or not?

- In favor of software patents

- Reward inventors creative work.
- Defend itself against attacks by incumbent rivals.
- Encourage inventors to disclose their inventions so others can build upon them
- Encourage innovation
- Stop the theft of its innovations by larger rivals.

Patents for Inventions in Software

To patent or not?

- Against software patents

- Patents can stifle innovation, rather than encourage it.
- Cost of lawyers to research patents and risk of being sued discourage small companies from attempting to develop and market new innovations.
- It is difficult to determine what is truly original and distinguish a patentable innovation from one that is not.

Any questions?



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