

# Intellectual Monopolies - I




also known as “*Intellectual Property*”

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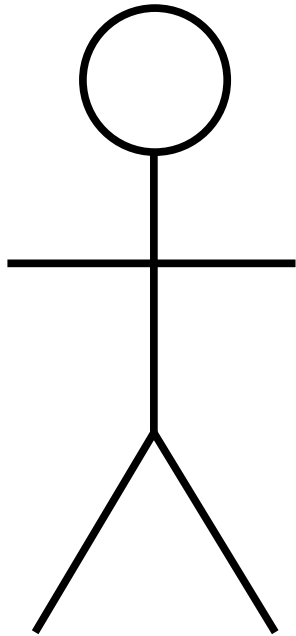
# Intellectual “*Property*”

# Property

*“For this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good, left in common for others.”*

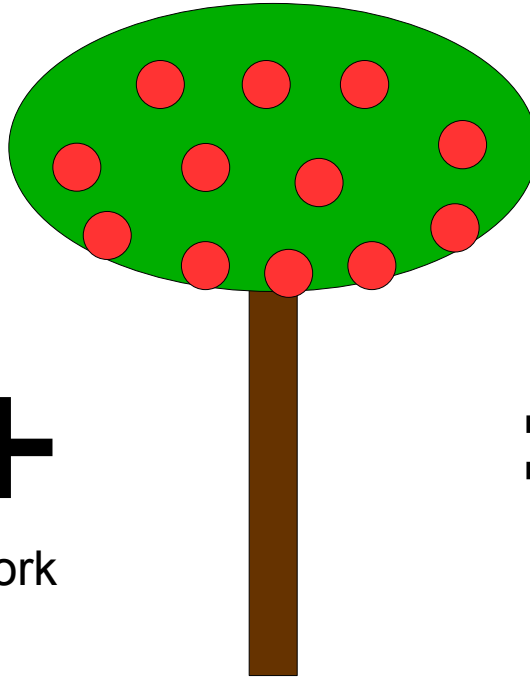
John Locke

# Property



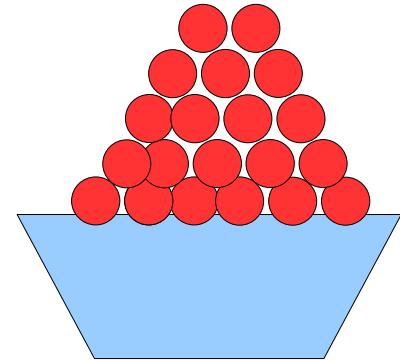
You own yourself

+  
Work



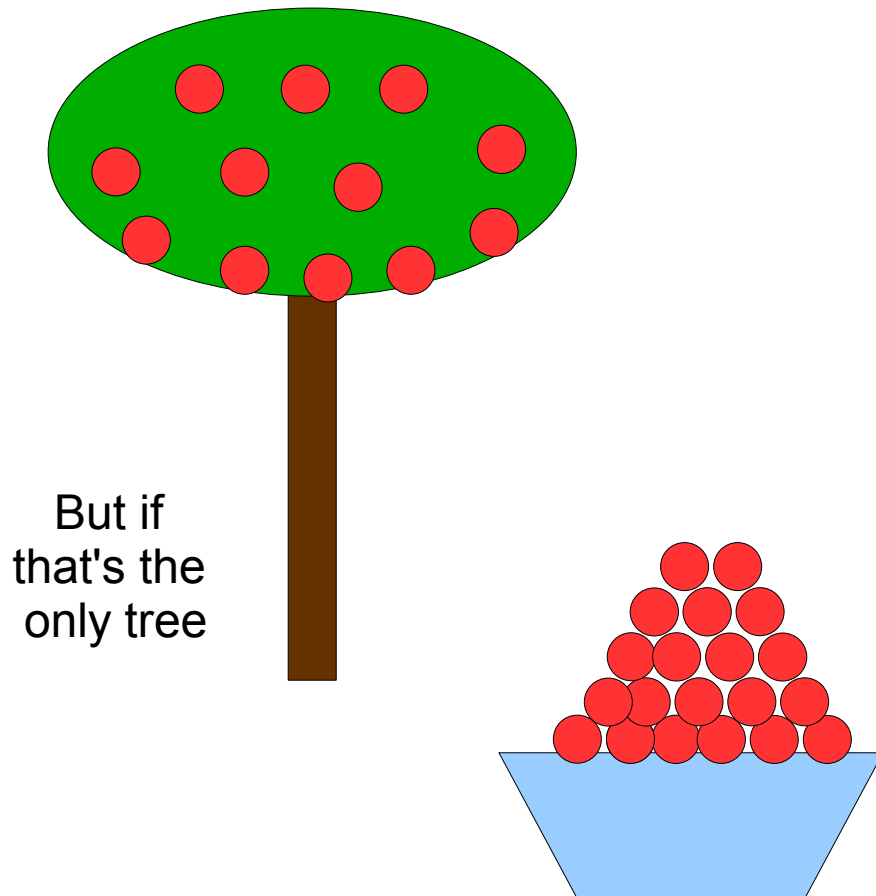
Stuff out there

=



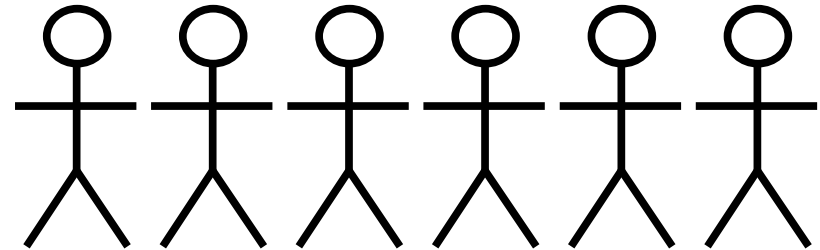
You own the outcome of your work

# Property



But if  
that's the  
only tree

And there are  
many of you



Then you may  
have to **share**

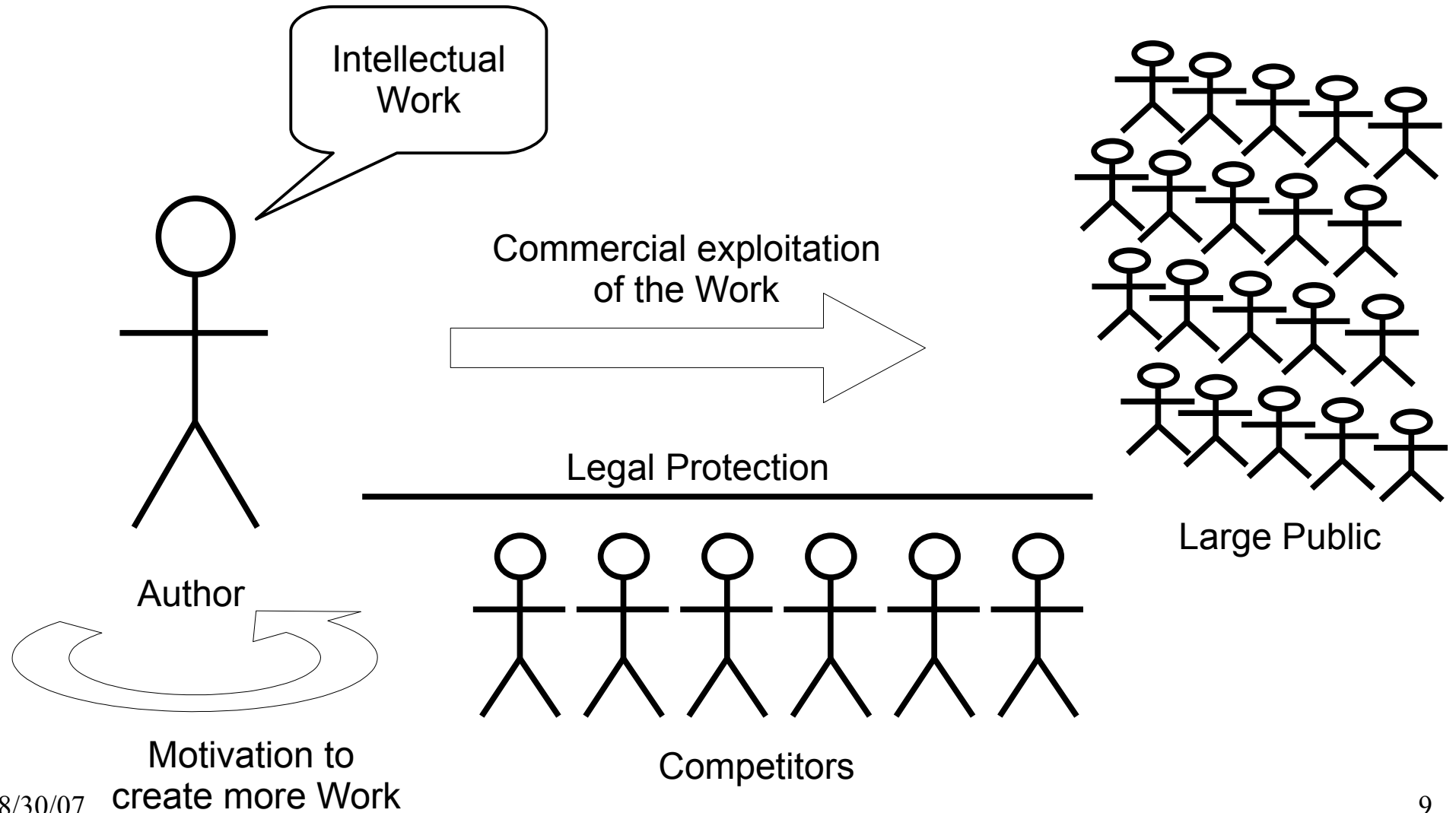
# US Constitution

*“Congress has the power to **promote the Progress of Science and useful Arts, by securing for Limited Times to Authors and Inventors the Exclusive Right to their respective Writings and Discoveries.**”*

(U.S. Constitution, Article I, Section 8)

[http://www.senate.gov/civics/constitution\\_item/constitution.htm#a1\\_sec8](http://www.senate.gov/civics/constitution_item/constitution.htm#a1_sec8)

# The Intention of the Law



# Intellectual “*Property*”

- Copyright
- Patents
- Trademarks
- Trade Secrets

# Intellectual “*Property*” Concepts

- **Copyright**
  - Exclusive right on the use of Expression of Ideas
- **Patents**
  - Exclusive rights on non-obvious, useful, new ideas
- **Trademarks**
  - Names, logos, symbols
- **Trade Secret**
  - Formula, practice, process

# Intellectual Property

- Geographical Indication
- Industrial Designs
- Trade names
- Domain names
- Database rights
- Plant breeder's rights
- Traditional Knowledge \*\*

# Intellectual “*Property*” Duration

- **Copyright**
  - 70 years after death of author
  - 95 years after first publication (in works for hire)
  - 120 years from the time of creation
- **Patents**
  - 20 years after filing
- **Trademarks**
  - Defined by active use of the name
- **Trade Secret**
  - Indefinite

# Copyright: Exclusive Rights

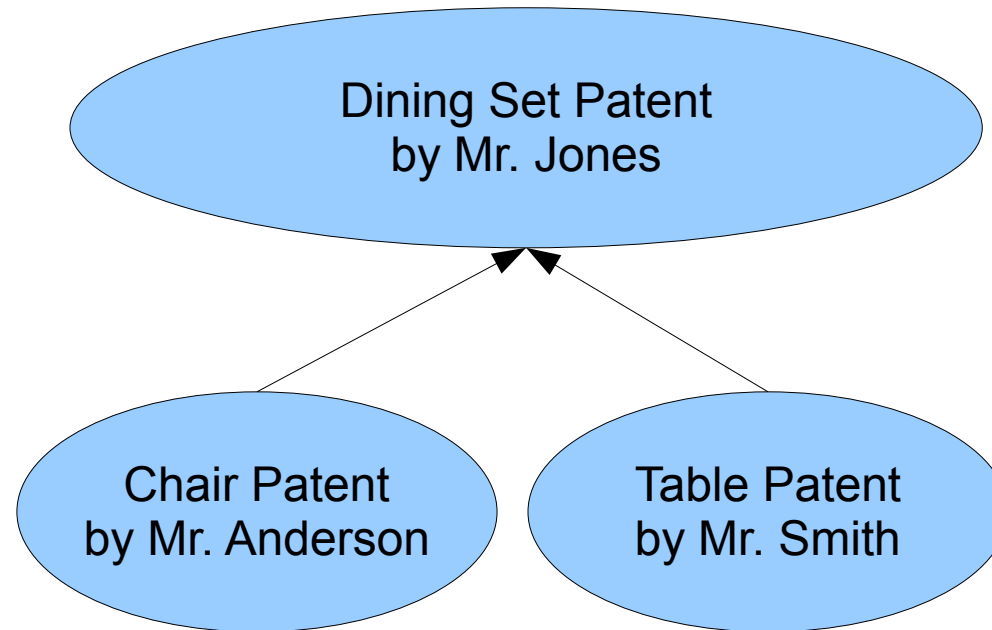
- The right to **reproduce** (copy)
- The right to **create derivative works**
- The right to **sell, lease, or rent copies** of the work
- The right to **perform** the work publicly
- The right to **display** the work publicly
- The right to **perform a sound recording** by means of digital audio.

# Patent: Right to Exclude

## Right to Exclude Others from

- **Making** products embodying your invention
- **Using** products embodying your invention
- **Selling** products embodying your invention
- **Offering** for sale products embodying your invention
- **Importing** products embodying your invention

# Patent: Right to Exclude

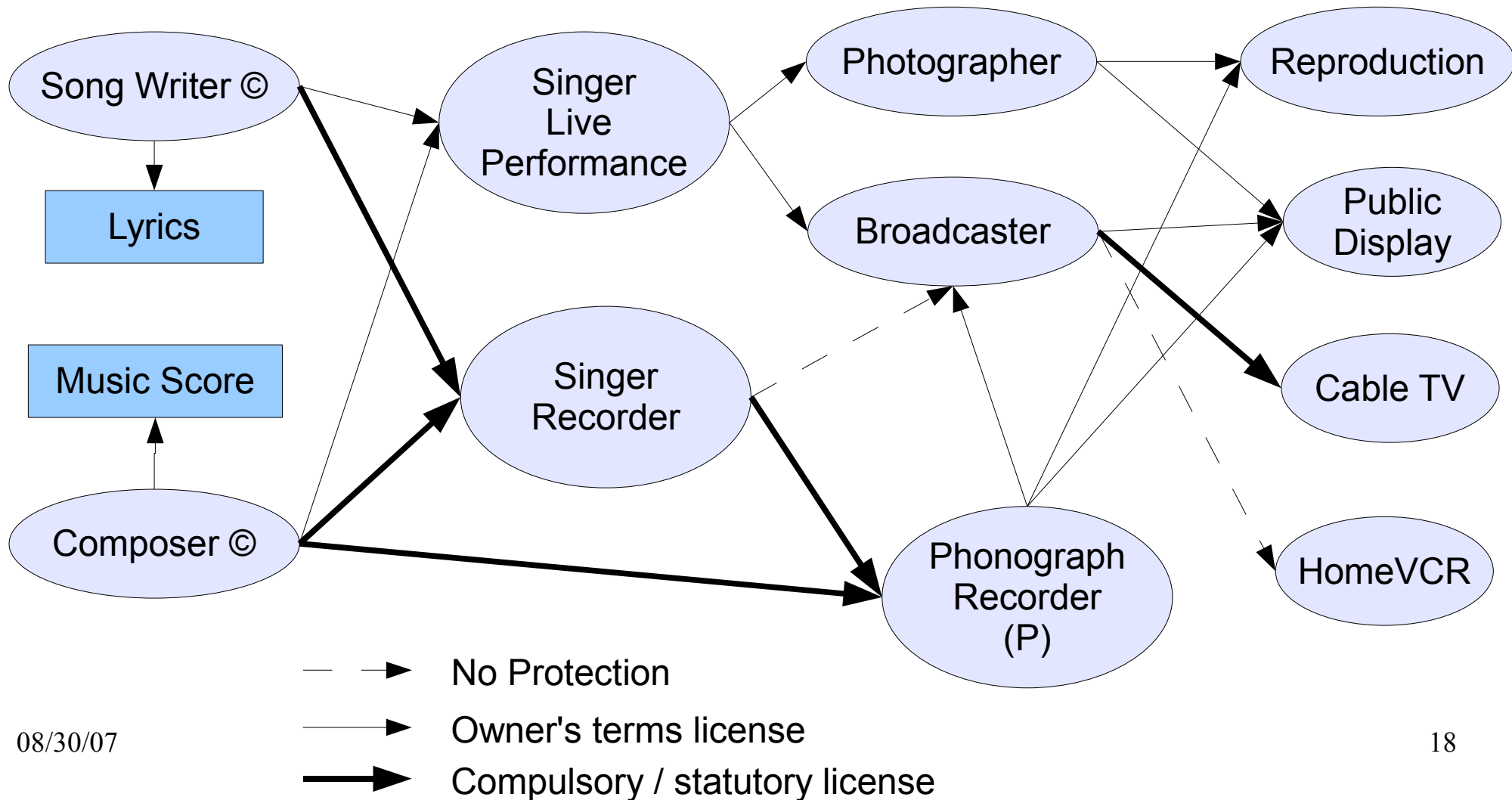


Mr Jones can prevent others from making dining sets, but he, himself cannot make a dining set without the permission of Mr. Anderson and Mr. Smith, since he needs to make some chairs and a table.

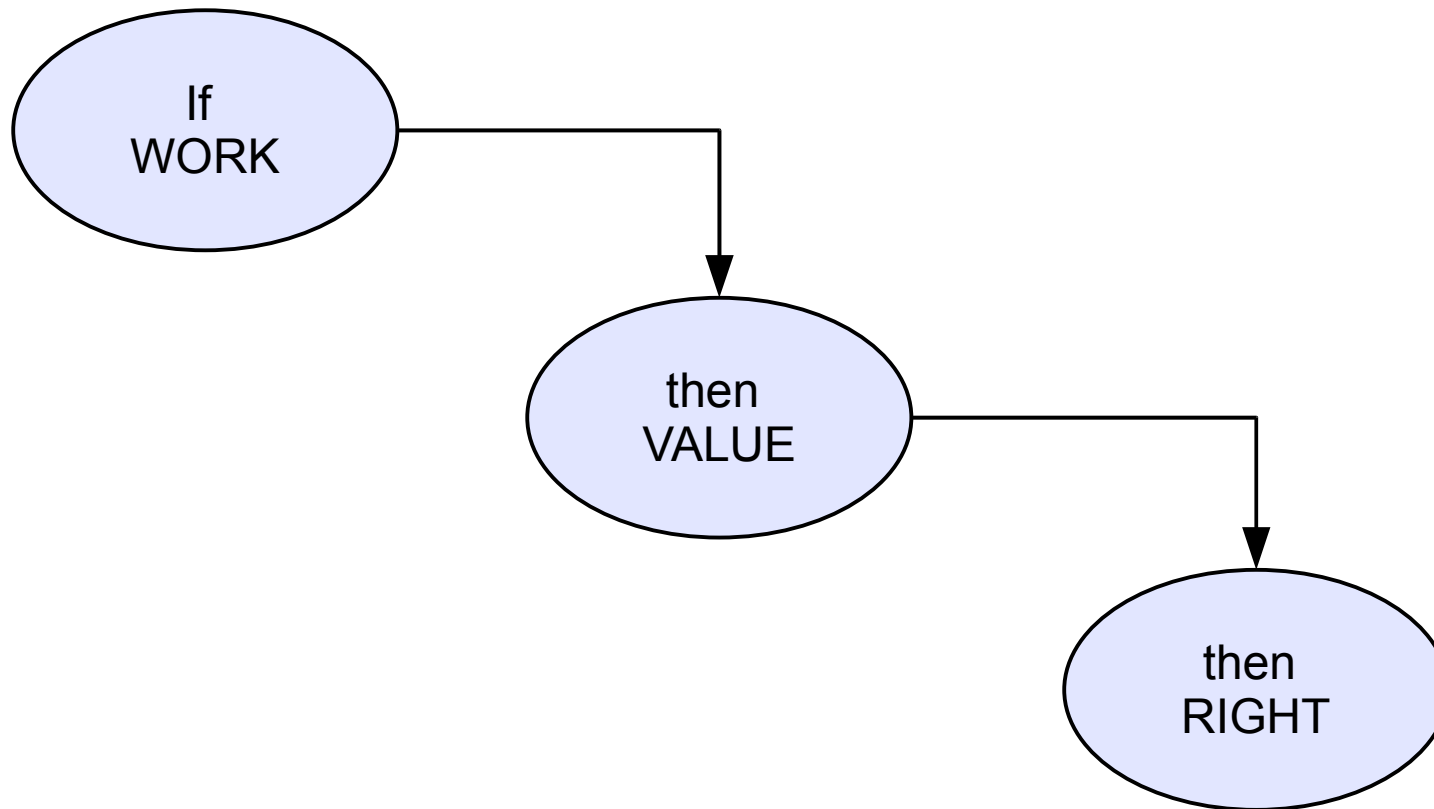
# Intellectual “*Property*”

- Related Rights
  - Performers
  - Broadcasters
  - Recorders
  - Film producers
  - Database creators
  - Photographers

# The Intellectual “*Property*” Network



# The Intellectual “*Property*” Cascade



# Copyright Concepts

- **Copyright is Automatic**
  - Your work is copyrighted as soon as it is put in a tangible form
  - You could add © <year> <author> just to let others know
- **Registration provides additional protection**
  - Is required to initiate litigation
  - Early registration allows for statutory damages and attorneys' fees if litigation becomes necessary
  - Registration is done with the Library of Congress
  - Cost \$45 (+ attorney fees ~ \$100 to \$700)

# Copyright Concepts

- **Works for Hire**

- Works created by employees as part of their job
- Copyright is held by the employer
- Check your contract...
- Contractors own the copyright of their work
- The person who hired the contractor has the right to a nonexclusive license
- US Government does not hold copyrights

# Copyright Concepts

- **Derivative Works**

A work based upon one or more preexisting works, such as

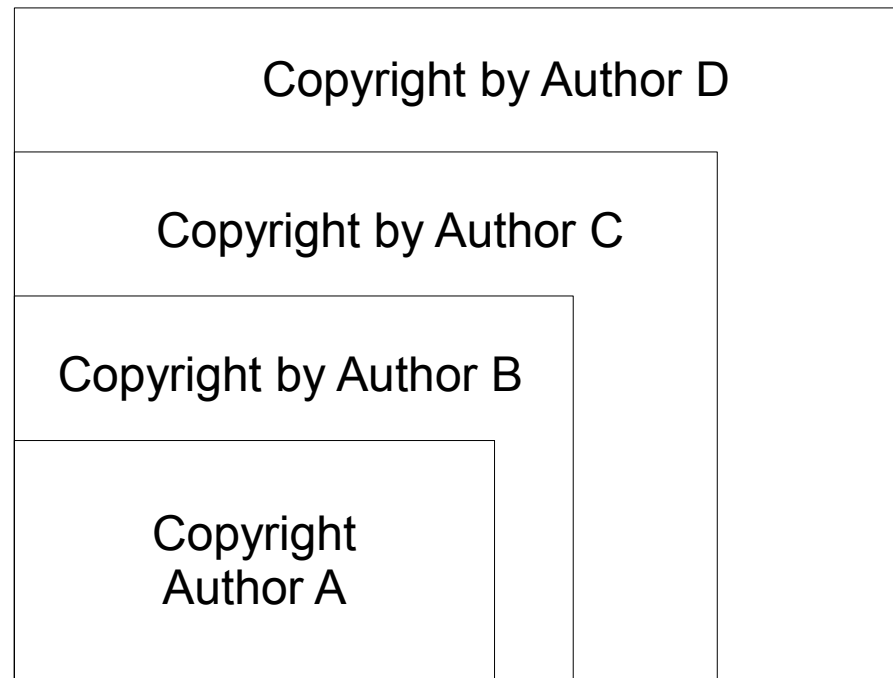
- A translation...  
or any other form in which a work may be
- recast,
- transformed,
- or adapted.
- **Very Important in Software Development**

# Copyright Concepts

Derivative Works

Collective Works

Compilations



Example:

[http://www.itk.org/cgi-bin/viewcvs.cgi/Utilities/vxl/vcl/emulation/vcl\\_vector.h?root=Insight&view=mar](http://www.itk.org/cgi-bin/viewcvs.cgi/Utilities/vxl/vcl/emulation/vcl_vector.h?root=Insight&view=mar)

# Copyright – Works of Authorship

- Literary
- Musical
- Dramatic
- Pantomimes
- Choreographies
- Pictorial
- Graphical
- Sculptural
- Motion Pictures
- Audiovisuals
- Sound recordings
- Architecture
- Software
  - Source code
  - Object code
- Compilations
- Derivative Works

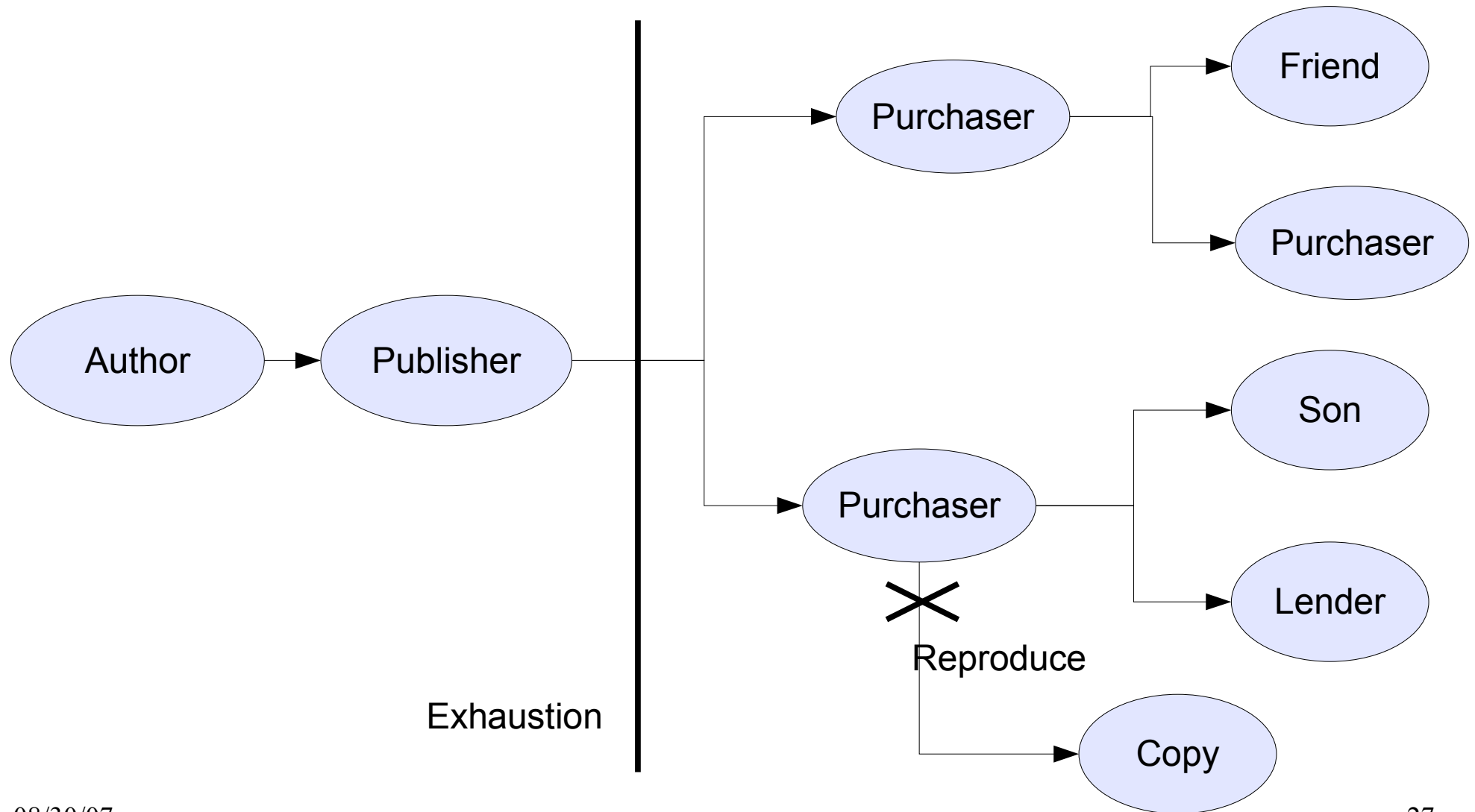
# Copyright Concepts

- **First Sale Doctrine**
  - You own the copy that you buy
- **Fair Use**
  - Limited use, not requiring permission
  - Stimulate creativity and enrich the public
  - Free speech
  - Avoid censorship of criticism
  - “fair” is not really about “fairness”

# Copyright – First Sale Doctrine - 1909

- **The Purchaser of a legal Copy can**
  - Sell it
  - Give it away
- **Copyright holder right to control distribution**
  - Ends once that copy is sold
- **Excluded**
  - Renting and leasing phonorecords
- **Software**
  - Licensed–not-Sold

# Copyright – First Sale Doctrine- 1909



# Copyright – Fair Use - 1976

- **Purpose and Character**
  - Transformative versus Derivative
  - Commercial or nonprofit educational
- **Nature of the Copyrighted Work**
  - Facts and Ideas versus Fiction
- **Amount and Substantiality of the work used**
  - With respect to the entire work
- **Effect on the potential market**
  - Loss of revenue as a consequence of the use

# Copyright – Fair Use - Examples

- **Quotation of Excerpts**
  - For illustration or comment in a criticism
  - For illustration or clarification in scholar work
- **Use in Parody**
  - Limited use, not requiring permission
- **Summary of an article**
  - In a news report
- **Reproduction to replace a damaged copy**
  - In a Library

# Balance 平衡

*“Intellectual property law is full of careful balances between what's set aside for the owner and what's left in the public domain for the rest of us.”*

Judge Alex Kozinski

End