

Intellectual Monopolies - II




also known as “*Intellectual Property*”

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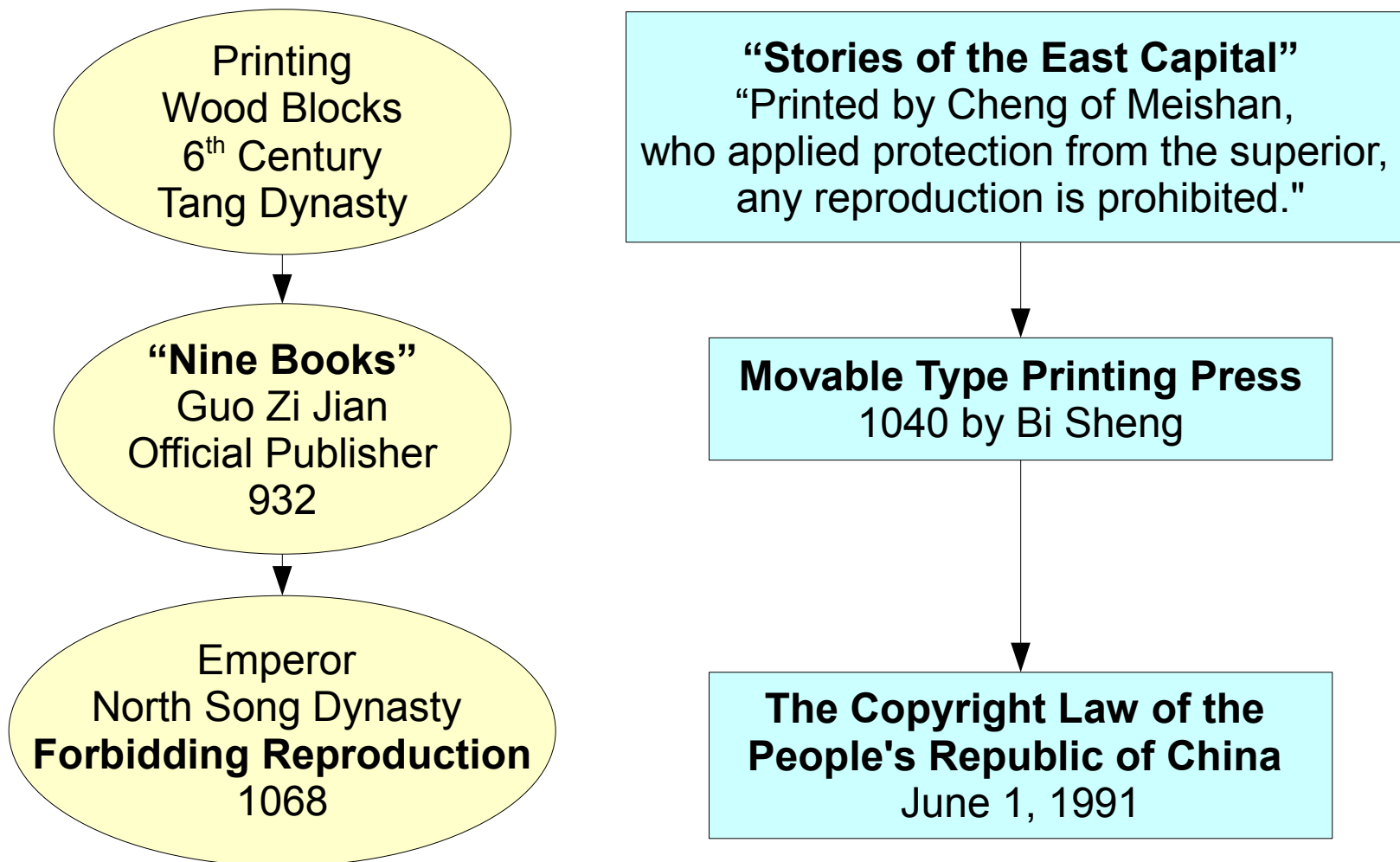
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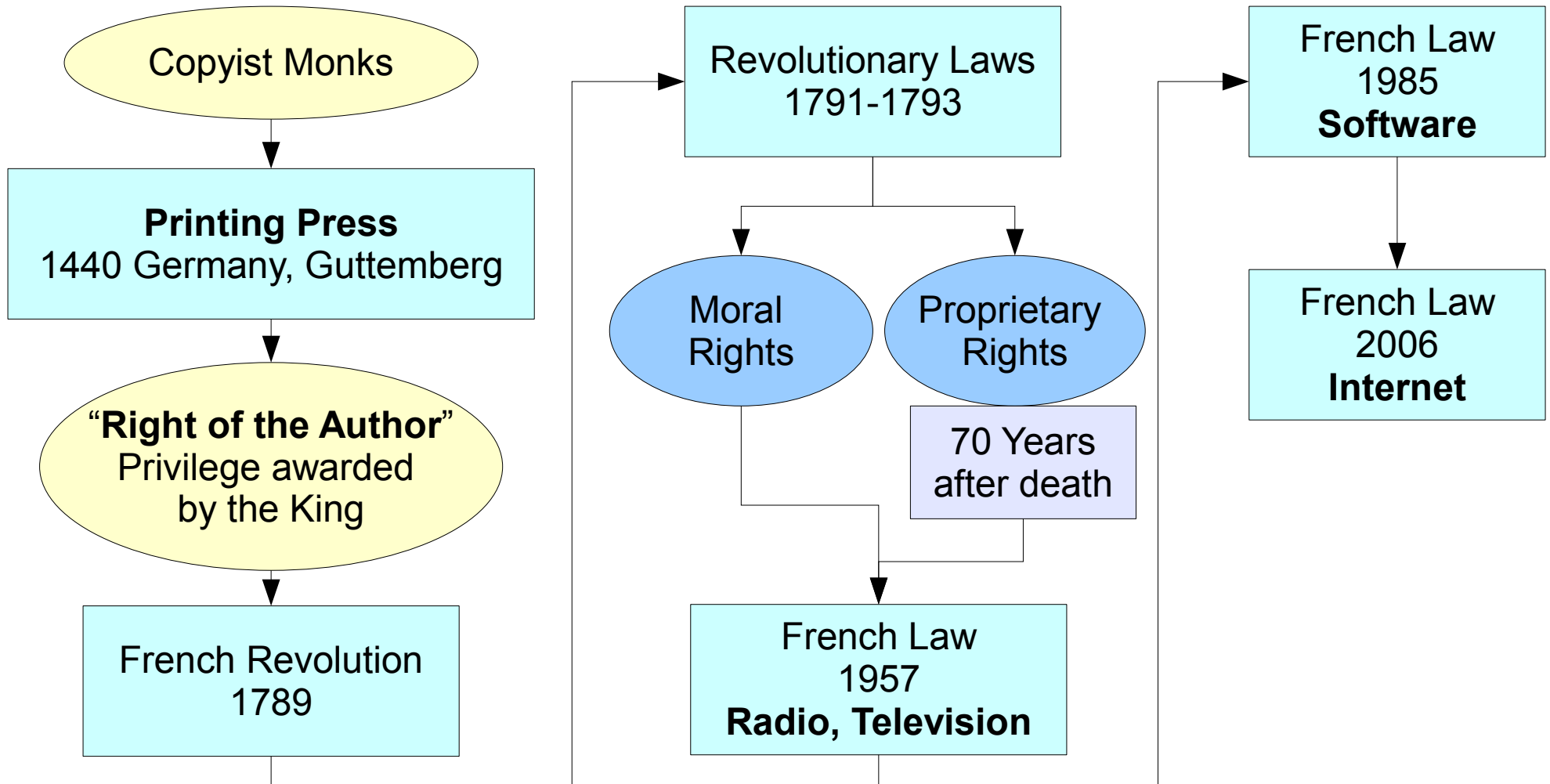
*“If you don't know history
then you don't know anything”*

Timeline, Michael Crichton

Technological Innovation Driving the Law - China

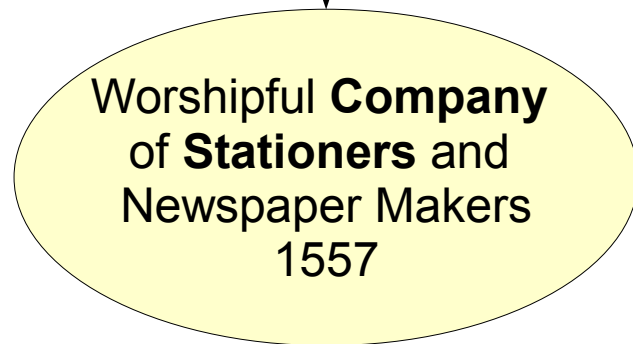


Technological Innovation Driving the Law - France



Anglo-American Laws

Queen Mary I, 1556



Monopoly on Book Publishing

Censorship, seize "*offending books*"

Monopoly Expired in 1695

Up to here:
No Notion of "Property"

Queen Anne, 1709

Authors instead of **Publishers** received Monopoly of reproduction for 14 years

Required printers to provide copies to the **Royal Library**

US Constitution, 1787

Copyright Act, 1790
George Washington

Required printers to provide copies to designated **Repositories**
>> **Library of Congress**

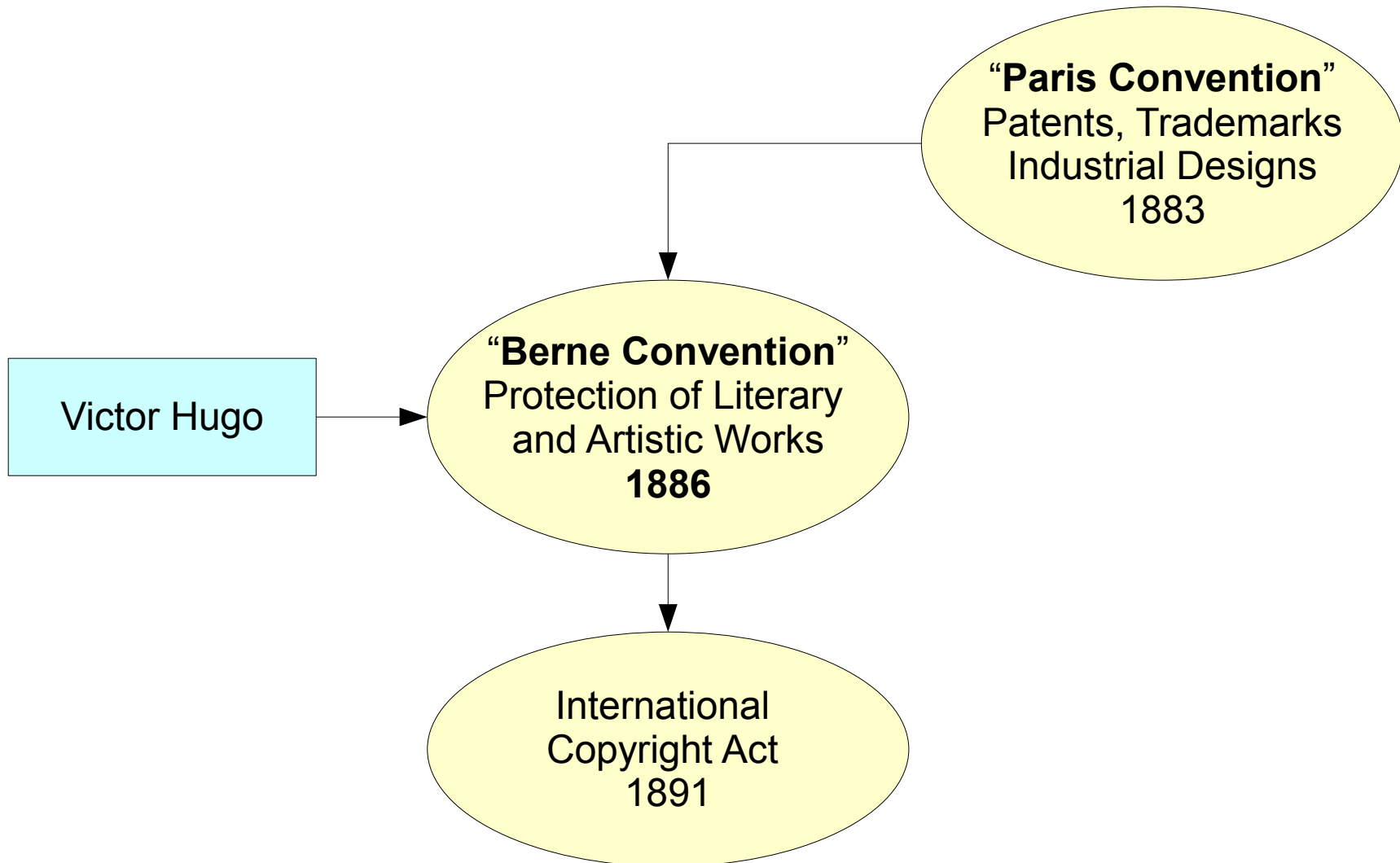
Copyright Act, 1909

Copyright Act, 1976

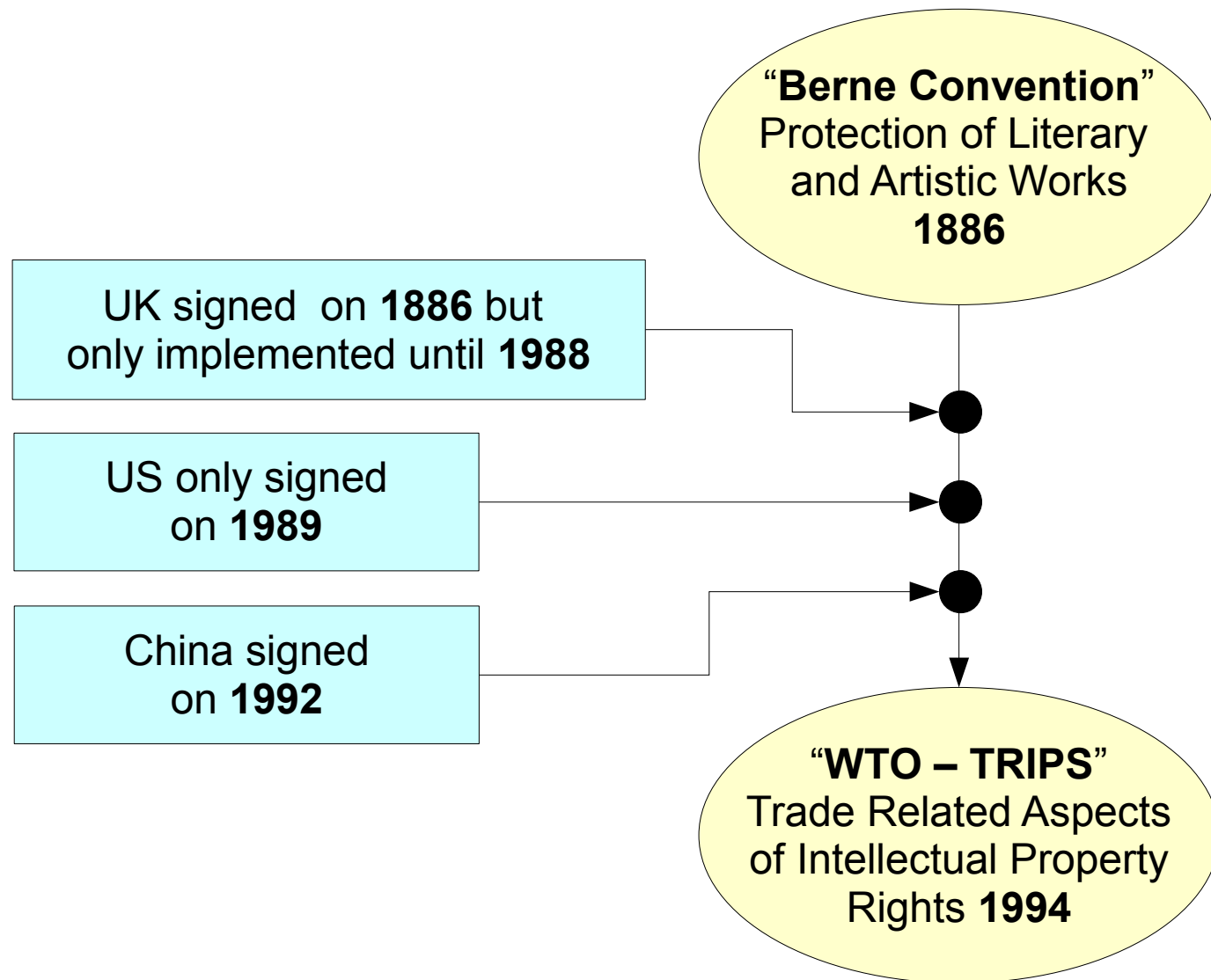
Copyright Extension Act, 1998

Digital Millennium Copyright Act, 1998

International Law



International Law & Protectionism



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

US Constitution

- **The purpose is :**
 - To **Promote Progress**
 - **Not** to enrich publishers
 - **Not** even to reward authors
- **The exclusive rights were intended for**
 - Authors and inventors
 - Not for publishers

Copyright Enforcement

If you infringe somebody's copyright, you may get a letter from one of the following institutions:

- **MPAA:** Motion Picture Association of America
- **RIAA:** Recording Industry Association of America
- **ASCAP:** American Society of Composers, Authors and Publishers
- **SIIA:** Software and Information Industry Association

Copyright Enforcement

Girl Scouts should pay performing rights for camping songs.

“The birds may sing, but campers can't unless they pay up”

Lisa Bannon, The Wall Street Journal

<http://archive.southcoasttoday.com/daily/08-96/08-23-96/b02li056.htm>

Copyright Enforcement

Is it somebody's birthday ?

“Happy Birthday to You”

Melody by Patty Hill and Mildred J. Hill, 1893

Copyrighted in 1935 by the Summy Company

When is the music going into public domain ?

Copyright Enforcement

“God Bless America”

Copyright 1938, 1939 by Irving Berlin

Copyright renewed 1965, 1966 by Irving Berlin

Copyright assigned to Winthrop Rutherford, Jr., Anne Phipps Sidamon-Eristoff, and Theodore R. Jackson as Trustees of the God Bless America Fund.

International copyright secured.

All rights reserved,

<http://www.loc.gov/exhibits/treasures/trm019.html>

Copyright Enforcement

NFL vs Churches

"We have no objection to churches and others hosting Super Bowl parties as long as they . . . show the game on a television of the type commonly used at home," he said. "It is a matter of copyright law." NFL

"It's ridiculous," Whitehead said. "You can go into these stores now and buy 100-inch screens. The law is just outdated."

Whitehead president of the Rutherford Institute, a Charlottesville civil liberties group that focuses on religious freedom issues

<http://www.washingtonpost.com/wp-dyn/content/article/2008/01/31/AR2008013103958.html>

Copyright Enforcement

Tattoo Artist sues NBA Star

"the man who put a tattoo on the right arm of Pistons forward Rasheed Wallace is suing to stop Wallace from "displaying" his artwork in ads for Nike basketball shoes"

"Wallace reportedly paid the artist, Matthew Reed of TigerLilly Tattoo and DesignWorks, \$450.00 for the tattoo -- but evidently that wasn't enough.

<http://www.eff.org/deeplinks/2005/02/tattoo-artist-sues-nba-star-copyright-infringement>

Copyright Abuse

- **SLAPP:**
Strategic lawsuit against public participation
- **Image:**
Evocation in the public mind
- **Censorship:**
Silencing criticism
 - International Olympic committee on YouTube video protesting against Tibet Occupation.
 - Julius Baer bank injunction against whistle blower who leaked documents (Wikileaks)

Copyright Term Evolution

- **Statue of Anne 1710** (British Law)
 - Term of 14 years, renewable for 14 years more
- **Copyright Act 1790** (American Law)
 - Term of 14 years, renewable for 14 years more
- **Copyright Act 1831**
 - Term of 28 years, renewable for 14 years more
- **Copyright Act 1909**
 - Term of 28 years, renewable for 28 years more

Copyright Term Evolution

- **Starting in 1962**
 - Copyright term has been extended **11 times**
 - Initially the extensions were short: 2 years
 - Then they became large: **20 years**
- **Copyright Act 1976**
 - Term of 50 years term after death of author
- **Copyright Act 1992**
 - Corporation 75 years term

“Mickey Mouse Protection Act”

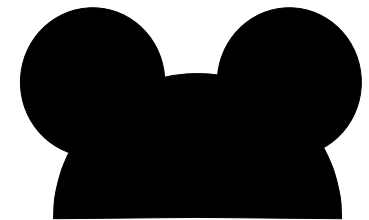
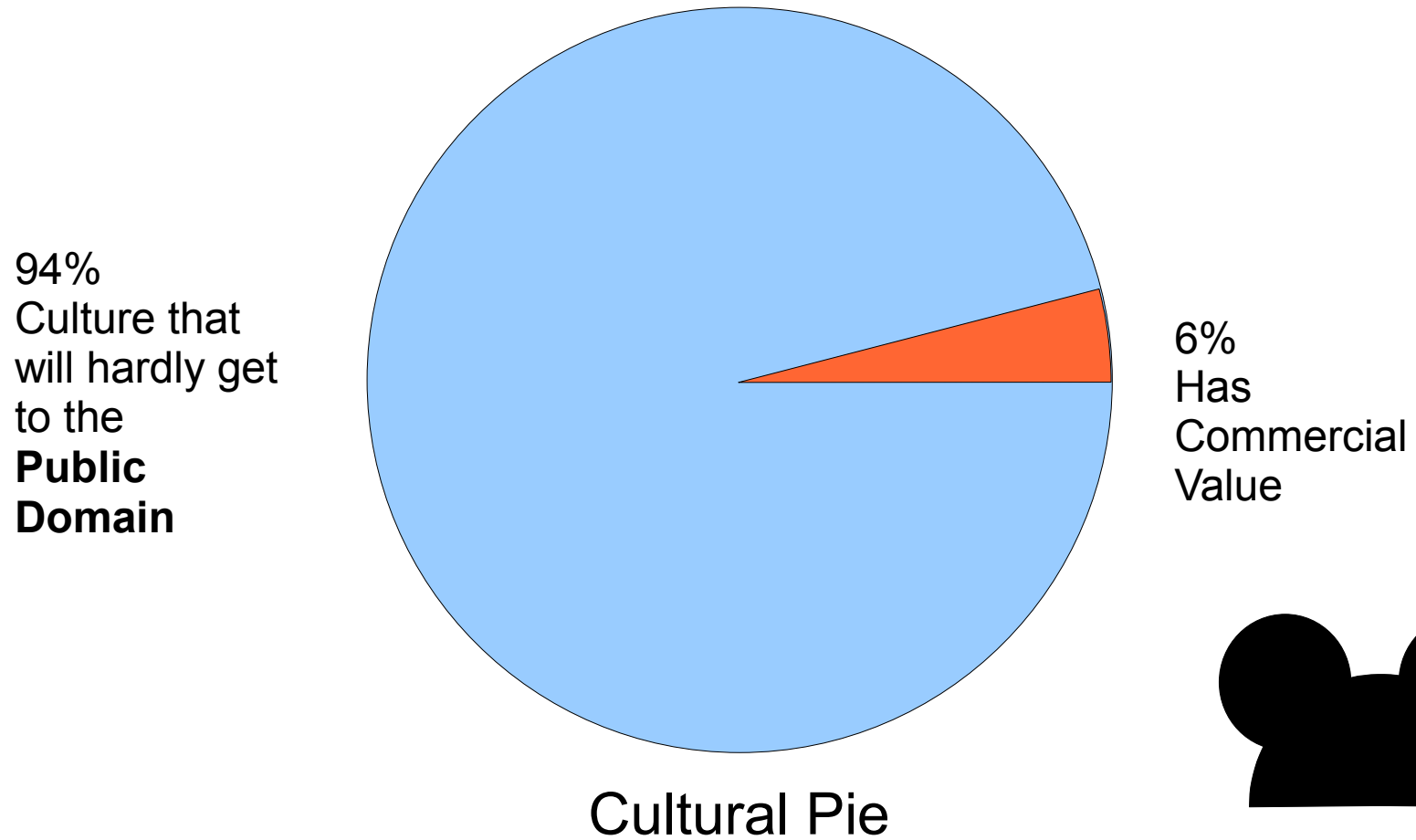
Sonny Bono Copyright Term Extension Act 1998

- **New Terms**
 - **70 years** after the death of the author
 - In collective works, the death of the last author
 - **95 years** in works for hire
 - **120 years** from date of creation
- **In a period of 20 years**
 - **1 million patents** will pass into the public domain
 - **Zero copyrights** will pass into the public domain

Copyright Increasing Scope

- **1790**
 - Charts, maps and books
- **Today**
 - Music, architecture, drama, computer code...
 - *Every creative act that is reduced to a tangible form*
 - Renewal requirement was dropped
 - Registration requirement was dropped
 - Derivative work is also controlled

Public Domain in Siege



Darth Vader

Software Coverage

- **1980:**
Congress decided that Software should be Copyrightable.
- **1981:**
US Supreme Court decided that software enabled inventions should be patentable.

Software Patents

- **Problem with the Patent Bargain Principle**
 - Protection of rights is given in exchange for public disclosure of the invention
 - Most software projects **do not** disclose their source code, only the verbal description of what the code does
 - Software patents on basic technologies bring the field to a gridlock, since it becomes too expensive to acquire all the licenses needed for developing applications.

*Creativity is impossible
without a rich public domain.*

Judge Alex Kozinski

<http://www2.bc.edu/~yen/Torts/Vanna%20White%20Koz%20ed.pdf>

Copyright Infringement as a Crime

Copyright Infringement as a Crime

- At the base: **Civil Litigation**
 - When found guilty the offender must pay
 - Statutory damages
 - Damages and Profits
- **Criminal** copyright penalties
 - Misdemeanor (minor crime)
 - Felony (serious crime)

Copyright Infringement as a Crime

- **1897** Misdemeanor (if willful and for profit)
 - Only for dramatic work.
 - Reproduction was not a crime
- **1909** Misdemeanor (if willful and for profit)
 - Covered all types of works
- **1976** Misdemeanor (if willful)
 - For commercial advantage or private financial gain
- **1997** Felony (if willful)
 - Regardless of profit motive

Copyright Infringement is a Felony

Just like:

- Treason
- Murder
- Rape
- Kidnapping
- Drug trafficking

No Electronic Theft Act 1997

- Reproduce or distribute copies of copyrighted work **electronically**:
 - Was made a **Felony**
 - Regardless of **profit** motive
- Deterrent for Motivations:
 - **Anti-copyright** or **Anti-corporate** sentiments
- Criminal **Misdemeanor**
 - Fraudulent **placing** of a copyright notice
 - Fraudulent **removal** of a copyright notice

No Electronic Theft Act 1997

- **Commercially** motivated infringer, up to
 - **five-year** federal **prison** term and
 - **\$250,000** in fines
- **Noncommercial** willful infringer, up to
 - **One-year prison** term and
 - **\$100,000** in fines
- Prison term maximum for **repeat infringers** is
 - **10 years** for **commercially** motivated ones
 - **6 years** for **noncommercial** infringers.

Digital Millennium Copyright Act

DCMA 1996

- **DRM: Digital Rights Management**
 - Access Control Technologies used to limit the USE (not just the copying) of copyrighted material
 - **EFF**: Claims that **DRM** exerts control beyond the limits granted by copyright laws.
- **DCMA:**
 - **Criminalizes** production and dissemination of technology, devices and services for **circumventing** DRM.
 - It applies **even if there is no** copyright infringement.

Digital Millennium Copyright Act

DCMA 1996

- Requires support for **Macrovision**
- **Silence** critics of the vulnerabilities of DRM systems.
- It makes 1/2 illegal to teach about decryption
- It makes 1/2 illegal to publish papers about cryptology

Consumer and Computer Protection and Security Act 2003

- Penalize File-Trading
- Anyone who downloads
 - **Even a single** song for **personal use**
 - **Felony** copyright infringer

Music Download

- **43 Million** Americans downloaded music in **2002**.
- **37 Million** Americans have downloaded music by early **2001**
- **13%** of US Population will become Felons

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

The Flaw of Copyright as “Property”

“If nature has made any one thing less susceptible than all others of exclusive property, it is the action of the thinking power called an idea,...

which an individual may exclusively possess as long as he keeps it to himself; but the moment it is divulged, it forces itself into the possession of everyone, and the receiver cannot dispose himself of it.”

Thomas Jefferson

End