

Intellectual Monopolies - II

also known as "*Intellectual Property*"

Dr. Luis Ibanez, Kitware






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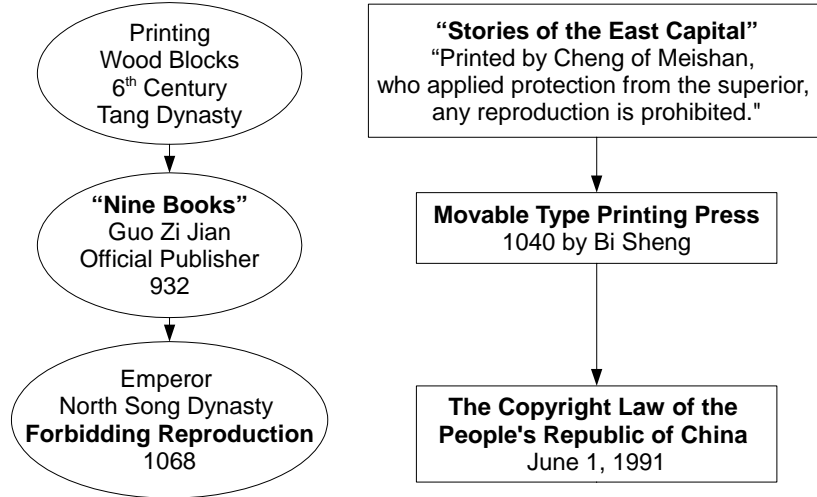
*“If you don't know history
then you don't know anything”*

Timeline, Michael Crichton

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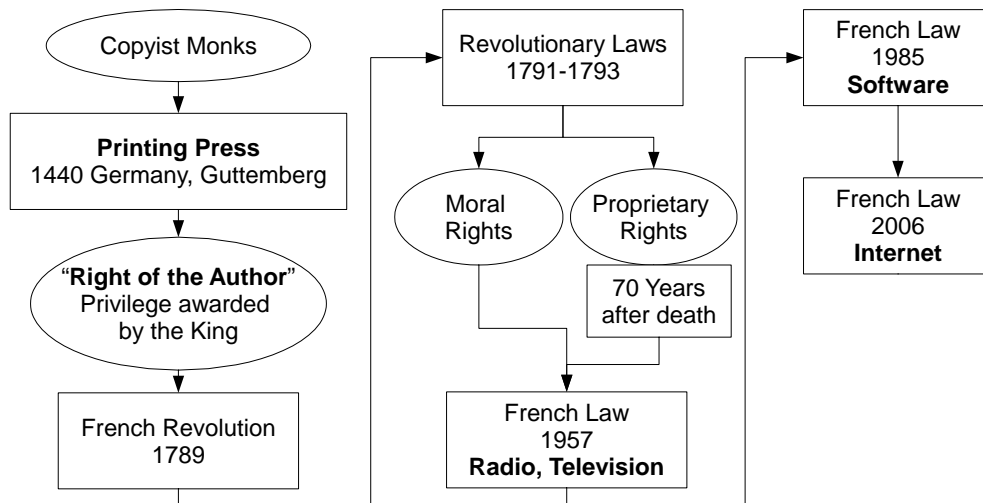
Technological Innovation Driving the Law - China



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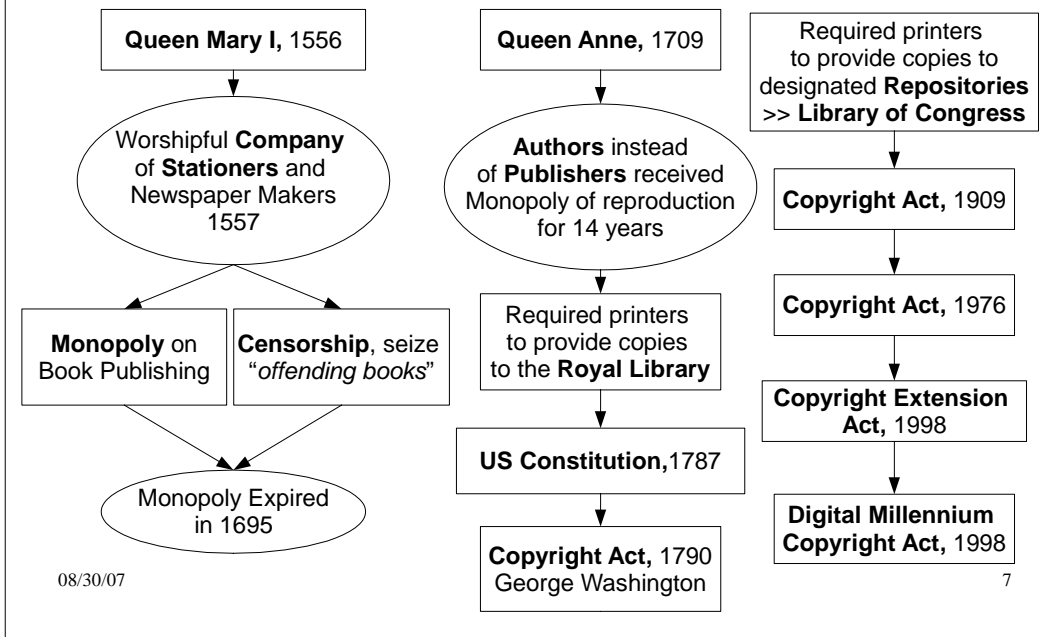
Technological Innovation Driving the Law - France



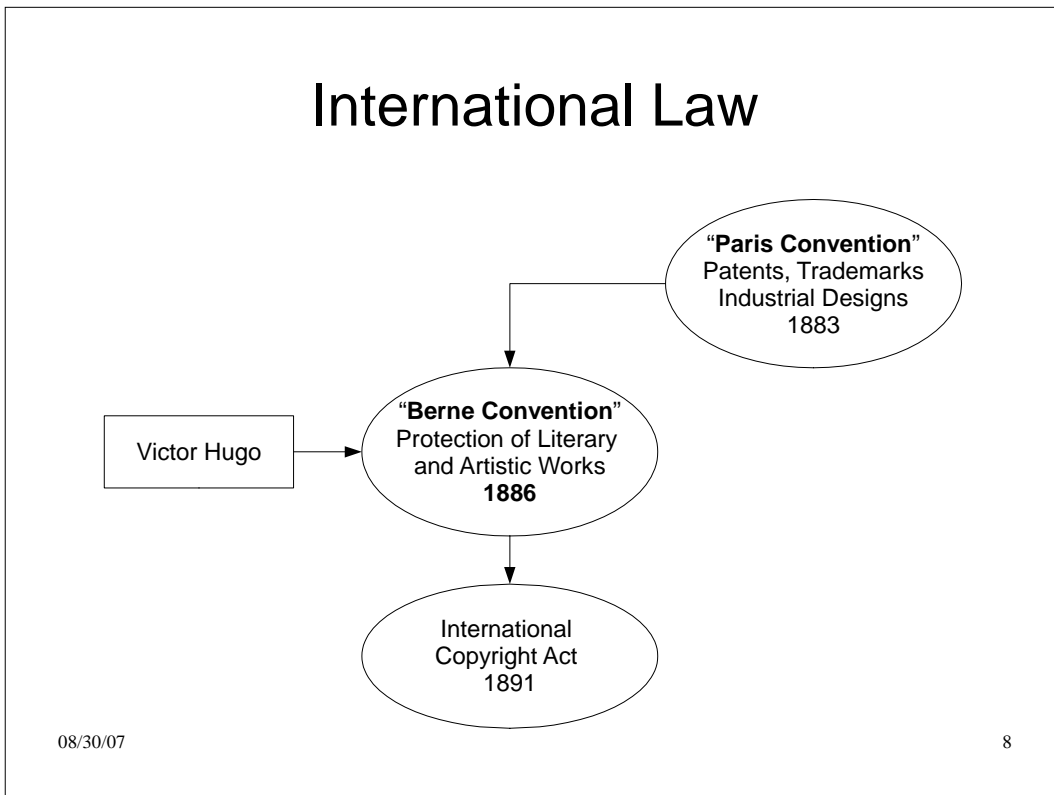
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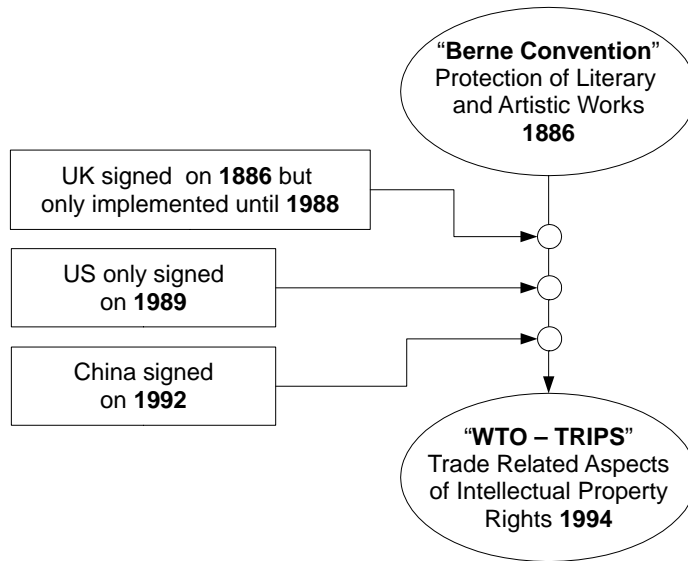
Anglo-American Laws



International Law



International Law & Protectionism



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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

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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

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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

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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>

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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 ?

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http://en.wikipedia.org/wiki/Happy_Birthday_to_You

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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>

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Copyright Abuse

- **SLAPP:**
Strategic lawsuit against public participation
- **Image:**
Evocation in the public mind
- **Censorship:**
Silencing criticism

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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

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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

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“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

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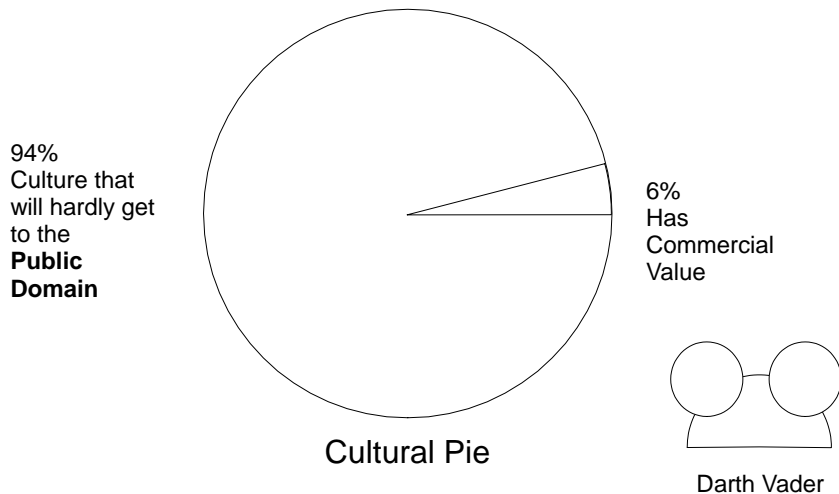
Copyright Increasing Scope

- **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

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Public Domain in Siege



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Software Coverage

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

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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.

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*Creativity is impossible
without a rich public domain.*

Judge Alex Kozinski

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

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Copyright Infringement as a Crime

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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)

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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

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Copyright Infringement is a Felony

Just like:

- Treason
- Murder
- Rape
- Kidnapping
- Drug trafficking

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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

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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.

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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.

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Digital Millennium Copyright Act

DCMA 1996

- Requires support for **Macrovision**
- **Silence** critics of the vulnerabilities of DRM systems.
- It makes ½ illegal to teach about decryption
- It makes ½ illegal to publish papers about cryptology

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Consumer and Computer Protection and Security Act 2003

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

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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

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Free Culture, *Lessig*, pp 138

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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