

Ce que le jeu

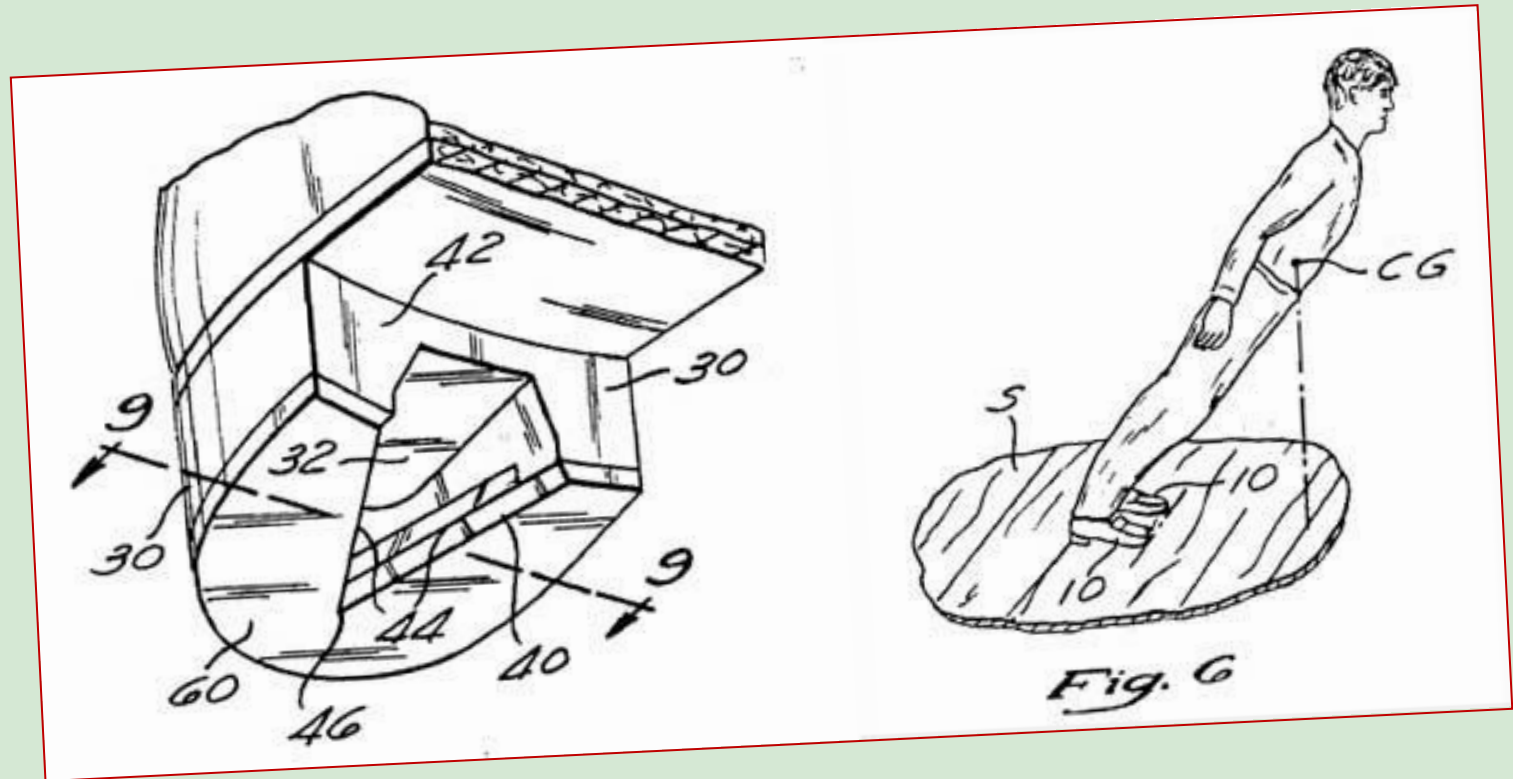
MONOPOLY

peut nous apprendre au sujet
du **droit d'auteur dans les
logiciels**

Xavier Beauchamp-Tremblay
Norton Rose Fulbright Canada

- Brevets
- Marques de commerce
- Droit d'auteur

Brevet



Monopole

Secret



Marques de commerce

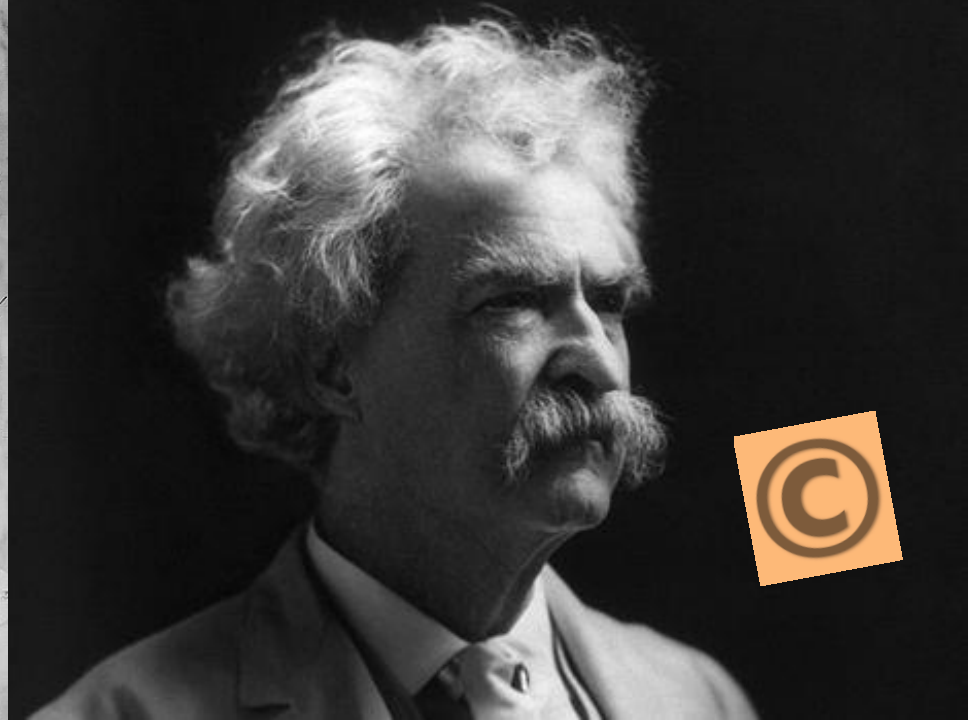
C-à-d "identificateurs de source"

The classic Coca-Cola logo in its signature red script font.

**The
Coca-
Cola
Company**

Droit d'auteur



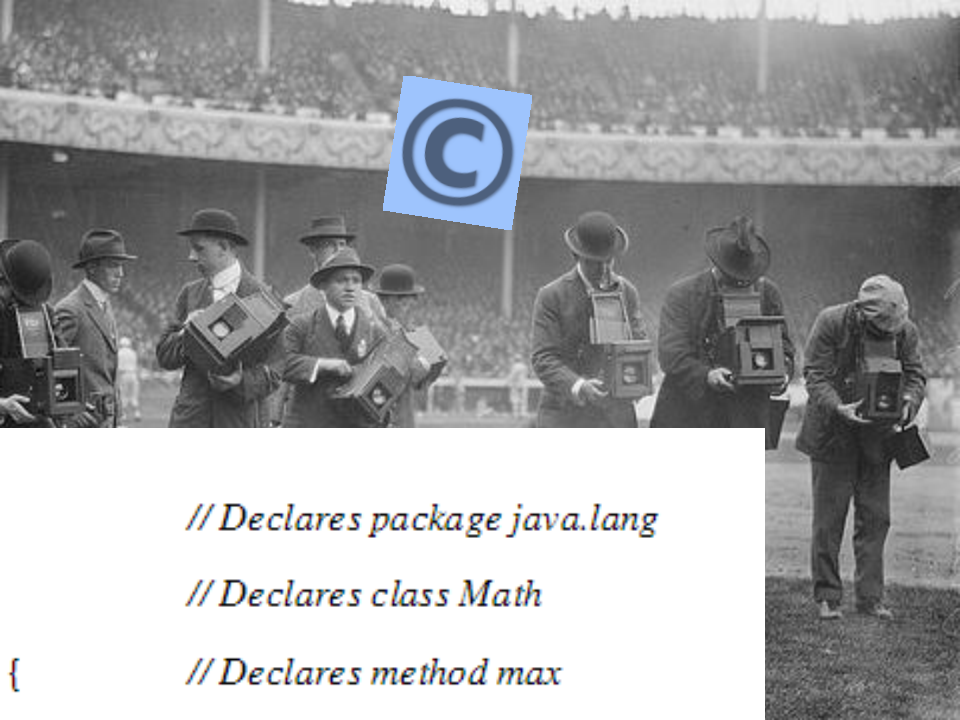
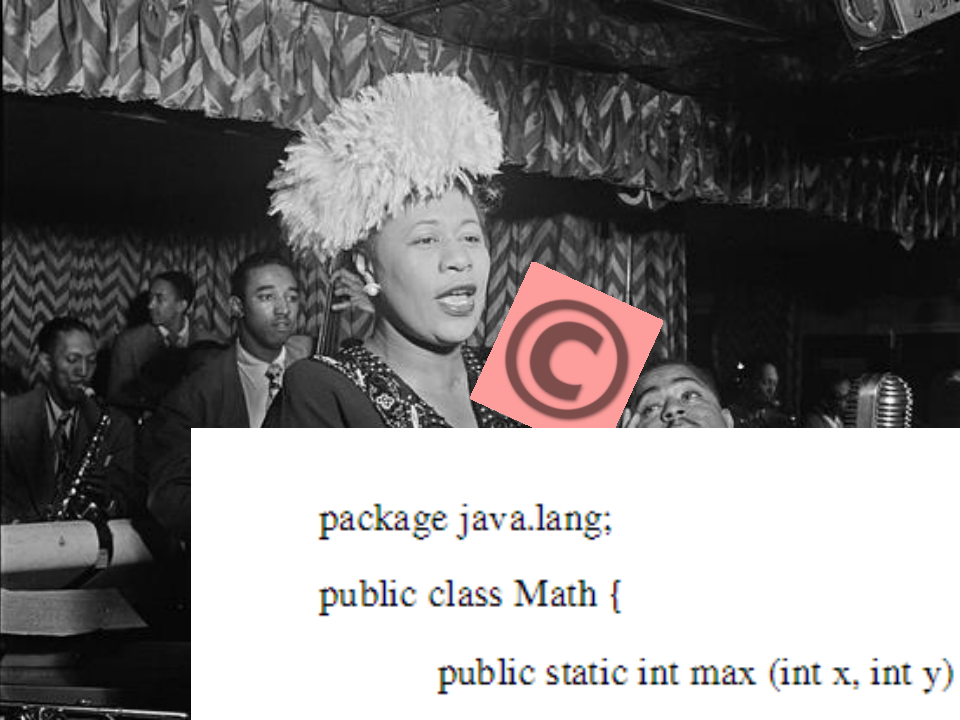


Idée

v.

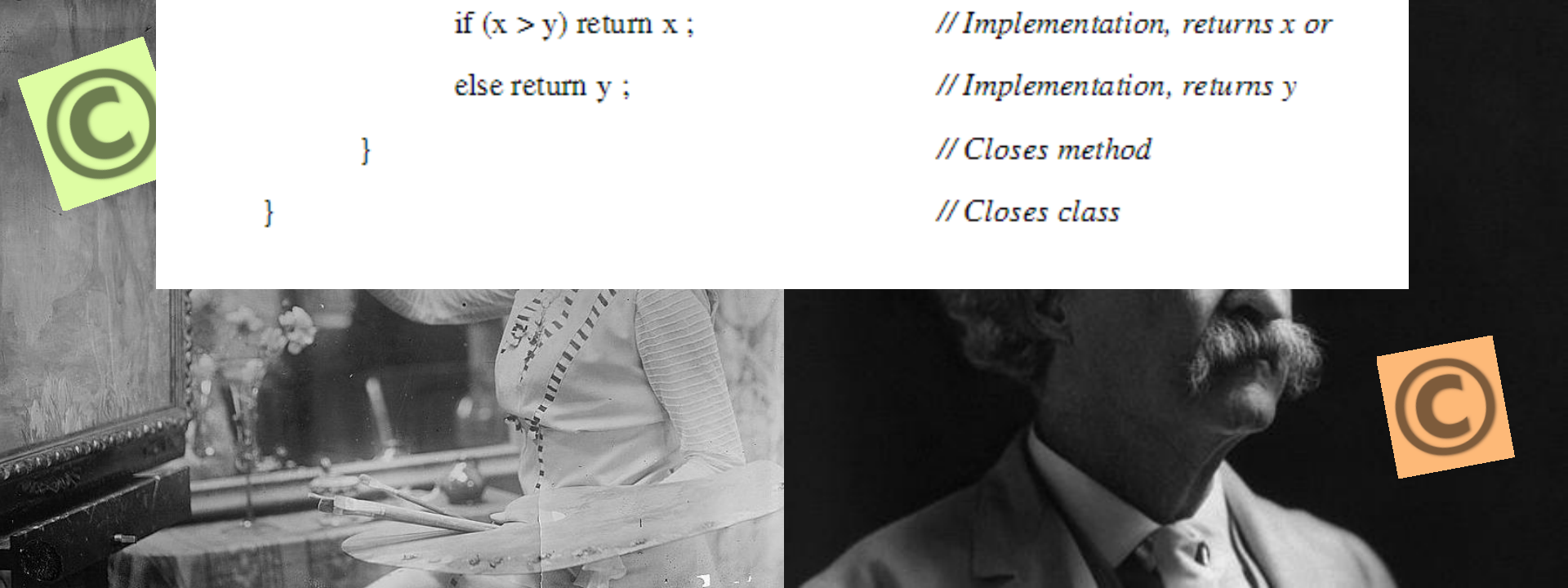
Expression de l'idée

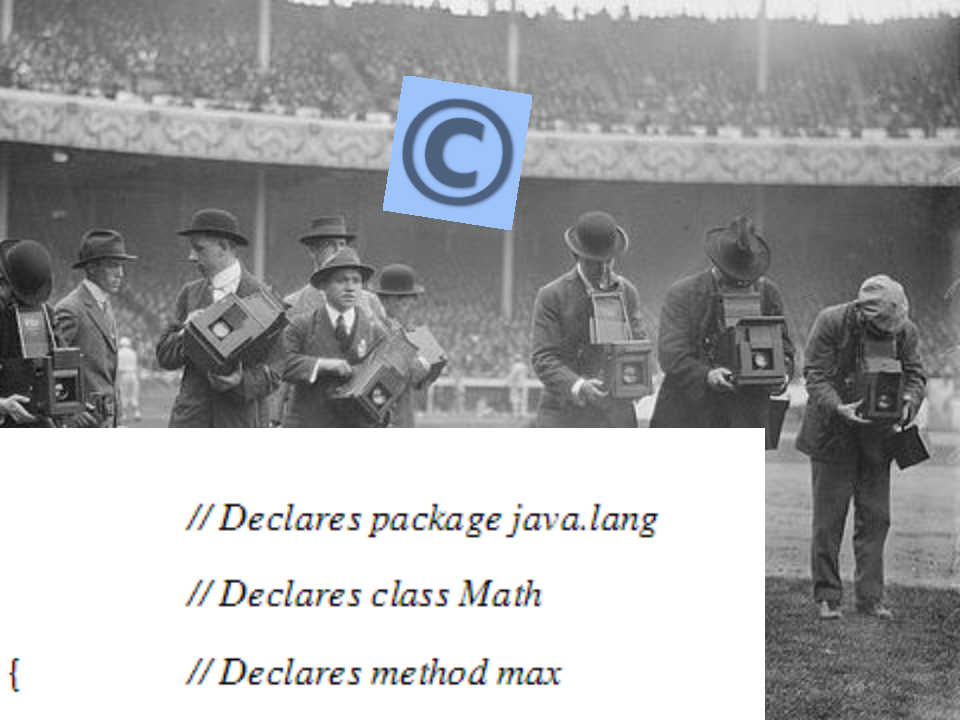
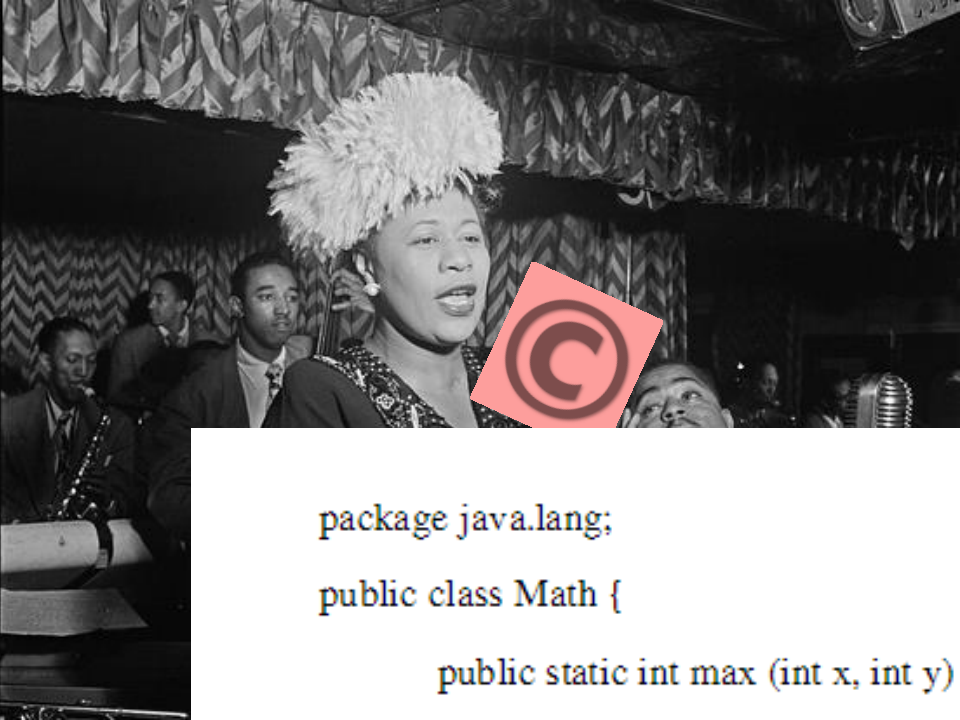




```
package java.lang;  
public class Math {  
    public static int max (int x, int y) {  
        if (x > y) return x ;  
        else return y ;  
    }  
}
```

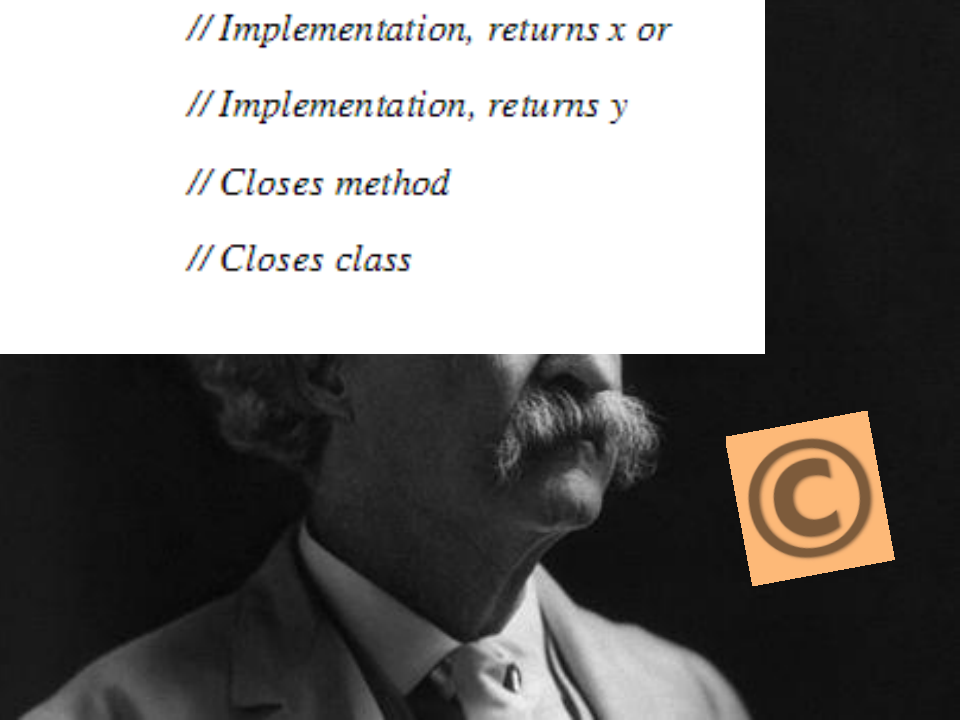
```
// Declares package java.lang  
// Declares class Math  
// Declares method max  
// Implementation, returns x or  
// Implementation, returns y  
// Closes method  
// Closes class
```

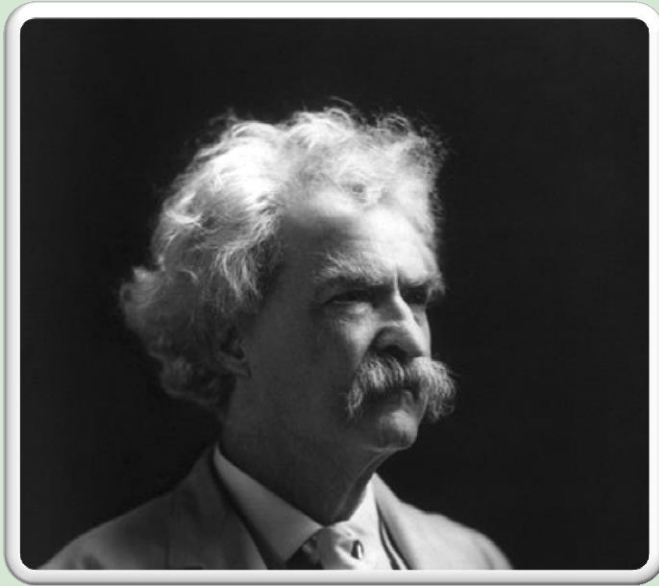




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Droits moraux

Valida

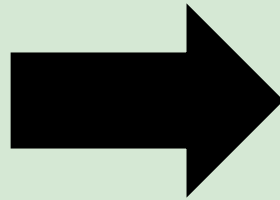




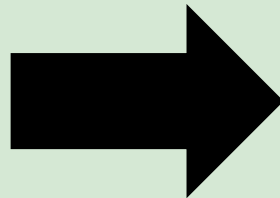
50 ans

	<p>MAYFAIR</p> <p>£1.8bn</p>	<p>SUPER TAX</p>  <p>£200m</p>	<p>PARK LANE</p> <p>£562m</p>	<p>CHANCE</p> 	<p>LIVERPOOL ST. STATION</p>  <p>£1.5bn</p>	<p>OXFORD STREET</p> <p>£550m</p>	<p>COMMUNITY CHEST</p> 	<p>PICCADILLY</p> <p>£440m</p>	<p>EUSTON ROAD</p> <p>£404m</p>	<p>GO TO JAIL</p> 									
<p>VINE STREET</p> <p>£15m</p>		<p>CHANCE</p>	<div style="text-align: center;">  <p>© The Fast-Dealing Property Trading Game</p> </div>				<p>COMMUNITY CHEST</p> 	<p>COVENTRY STREET</p> <p>£57m</p>	<p>INCOME TAX</p> <p>Pay £100m</p>	<p>MARYLEBONE STATION</p>  <p>£500m</p>	<p>LEICESTER SQUARE</p> <p>£68m</p>	<p>CHANCE</p> 	<p>BOW STREET</p> <p>£71m</p>	<p>WHITECHAPEL ROAD</p> <p>£81m</p>					
<p>REGENT STREET</p> <p>£370m</p>	<p>WATER WORKS</p>  <p>£8bn</p>	<p>STRAND STREET</p> <p>£320m</p>					<p>BOND STREET</p> <p>£271m</p>	<p>KINGS CROSS STATION</p>  <p>£1bn</p>	<p>PALL MALL</p> <p>£228m</p>	<p>PENTONVILLE ROAD</p> <p>£15m</p>	<p>CHANCE</p> 	<p>WHITEHALL</p> <p>£1127</p>	<p>FREE PARKING</p> 	<p>OLD KENT ROAD</p> <p>£208m</p>	<p>FLEET STREET</p> <p>£148m</p>	<p>COMMUNITY CHEST</p> 	<p>M BOROUGH STREET</p> <p>£125m</p>	<p>FENCHURCH ST.</p> <p>£700m</p>	<p>NORTHUMBERLAND SQUARE</p> <p>£112m</p>

 GO COLLECT £200 SALARY AS YOU PASS	MAYFAIR £1.8bn	SUPER TAX £200m	PARK LANE £562m	CHANCE 	LIVERPOOL ST. STATION £1.5bn	OXFORD STREET £550m	COMMUNITY CHEST 	PICCADILLY £440m	EUSTON ROAD £404m	GO TO JAIL 	REGENT STREET £370m	WATER WORKS £85m	BOND STREET £271m	KING CROSS STATION £1bn	PALL MALL £228m	PENTONVILLE ROAD £215m	CHANCE 	WHITEHALL £211m		OLD ROAD £71m	COMMUNITY CHEST 	M BOROUGH STREET £125m	FENCHURCH ST £700m	NORTHUMBLED AVENUE £112m	TRAFALGAR SQUARE £97m	ELECTRIC COMPANY £12.4bn	THE ANGEL ISLINGTON £91m	JUST VISITING
<h1>IMMOBILIO</h1>																												
VINE STREET £15m	COMMUNITY CHEST 	CONVENTRY STREET £57m	INCOME TAX PAY £700m	MAYFAIR STATION £500m	LEICESTER SQUARE £68m	CHANCE 	BOW STREET £71m	WHITECHAPEL ROAD £81m	JUST VISITING 																			



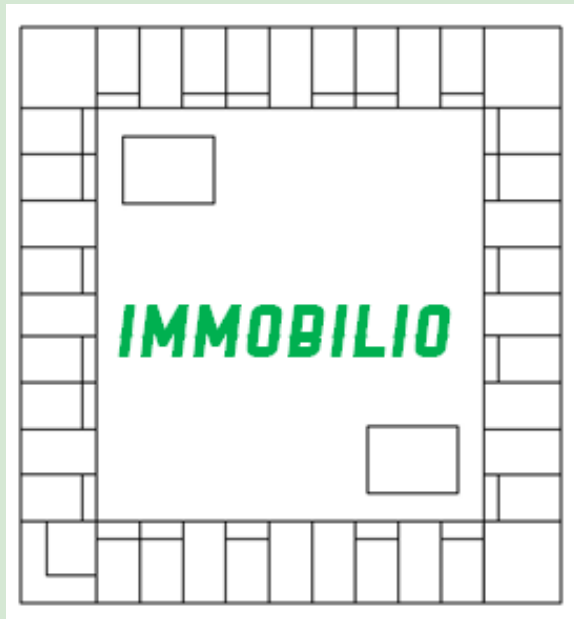
Aléas des affaires



Philanthropie obligatoire



- Même jeu
- Même structure
- Même séquence
- Même organisation



- « Cosmétique »
différente pour planche,
cartes et pions
- Mêmes règlements,
expliqués dans un texte
différent

Oracle v. Google
The first of the

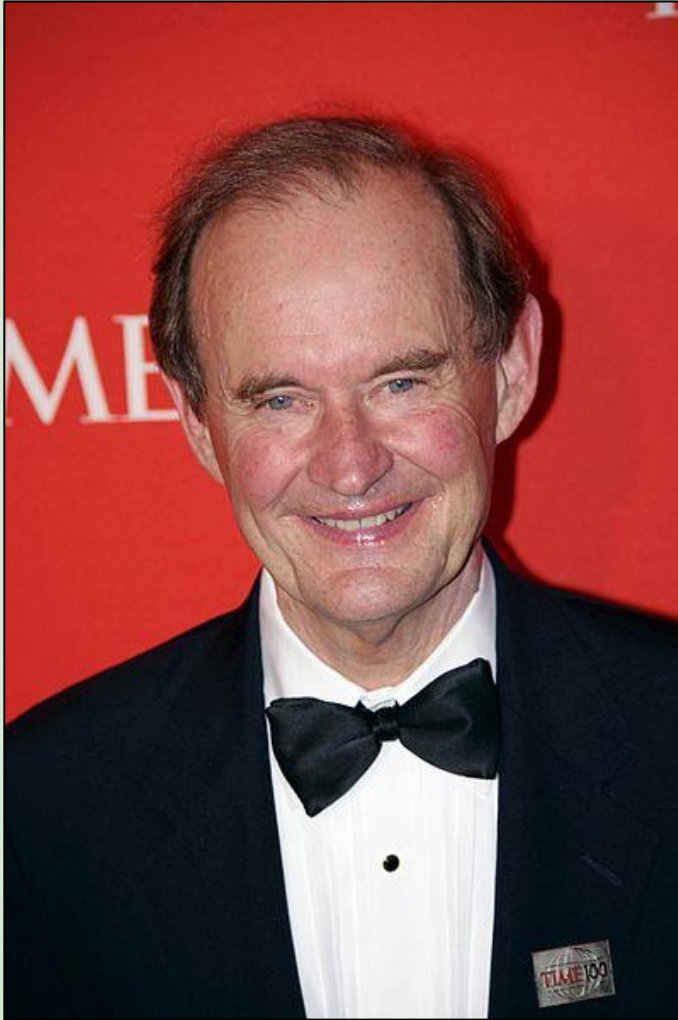
SMART PHONE WARS

SMART PHONE WARS

The extent to which, if at all, certain elements of the

- Structure
- Sequence
- Organization

of the Java application programming interface (API) are protected by copyright



- Dossier antitrust c. Microsoft
 - Proposition 8
 - Gore v. Bush
- Sujet d'un chapitre de Malcom Gladwell
 - Interprété par George Clooney

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http://en.wikipedia.org/wiki/File:David_Boies_2011_Shankbone.JPG

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- Pas de copie littérale du logiciel
- Organisation et fonctions des 37 « packages » sont les mêmes
- L'implémentation (le “corps” du code informatique) est différente



I have done, and still do, a significant amount of programming in other languages. I've written blocks of code like `rangeCheck` a hundred times before. I could do it, you could do it.

The idea that someone would copy that when they could do it themselves just as fast (is ridiculous). [I]t was an accident.

There's no way you could say that was speeding them along to the marketplace. You're one of the best lawyers in America, how could you even make that kind of argument?

- How many ways to express this particular idea?
- Are we in fact seeking to protect a method?

- When only one way (or only a few) of expressing something, no one can claim ownership (**merger doctrine**)
- Names and short phrases not copyrightable (accounts for all similarities in code)
- Copyright never extends to idea, processes, methods, etc.

Qu'en est-il « Ô *Canada* »?

Delrina v. Triolet (ON CA)

[The trial judge erred in] applying U.S. authorities on the copyrightability of computer programs without regard to the **significant differences** between the copyright statutes and the development of copyright law in Canada and the U.S.

While Anglo-Canadian copyright law also places significant emphasis on the **idea/expression distinction**, this principle has not been applied with the same rigour.

This departure has created some doctrinal tension. In choosing to protect skill and labour, **British and Canadian courts** have accorded a certain degree of protection to ideas.

But...

Accepting that there may be this difference in the law, it has been recognized in Anglo-Canadian law that the non-protection of ideas embraces the view that there is **no copyright** in any arrangement, system, scheme or method for doing a particular thing or process.

TRIPS agreement (incorporated in
Canadian law)

“Copyright protection shall extend to expressions and **not to** ideas, procedures, **methods** of operation or mathematical concepts as such.”

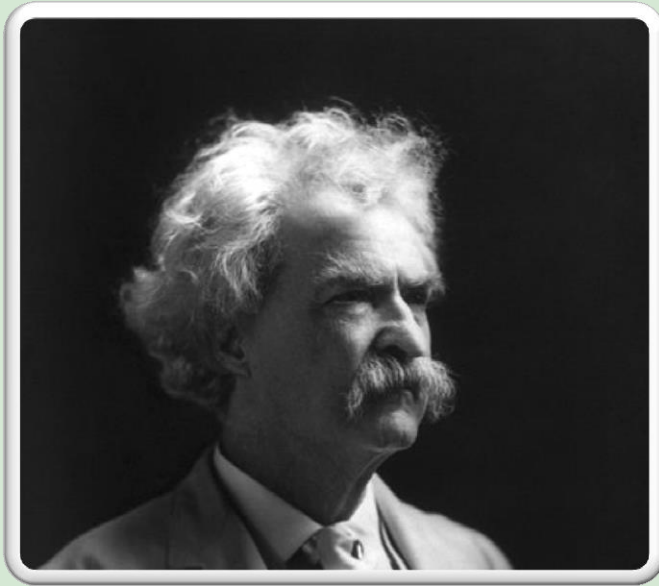
Merger doctrine:

If an idea can be expressed **in only one or in a very limited number of ways**, then copyright of that expression will be refused for it would give the originator of the idea a virtual monopoly on the idea.

In such a case, it is said that **the expression merges with the idea and thus is not copyrightable.**

The merger notion is a natural corollary of the **idea/expression distinction** which, as I have said, is fundamental in copyright law in Canada, England and the United States.





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