

Outline of Presentation by Brian Kahin, JFK School of Government

Different IP regimes: Patent, Copyright, Trade Secret, (Contract)

1976 Copyright Act: elegant, "technology-neutral"

Significance of digital information

Information becomes functional

Significance of networking

"Information-defined networks"

Classical copyright

idea/expression dichotomy

bundles of rights

work/copy distinction

publisher as bottleneck

first sale doctrine

Gateway vision:

direct dealing between publisher and end-user

multiple intermediaries adding value

Multimedia problems

diverse industries

underlying rights

uncertain technological environment

lack accounting mechanisms and systems

Need for CONTU 2 -- areas of controversy and uncertainty

Software patents

Copyright in compilations (Feist decision)

"Reverse engineering" (Sega v. Accolade)

"Look and feel" (Lotus cases)

Derivative works (Galoob v. Nintendo)

Fair use (Texaco, Sony)

Public performance/public display

Contract (licensing) as a solution

Government information

legal perspective

"Let the courts work it out."

business perspective

"Settle the groundrules now."

decreasing length of protection →

trade secret

indefinite

-- taking by

"improper means"

copyright

life plus 50 yrs/ 75 yrs

-- actual copying

patent

17 yrs

-- manufacture & use

increasing scope of protection →

contract

state law

trade secret

copyright

federal law

patent

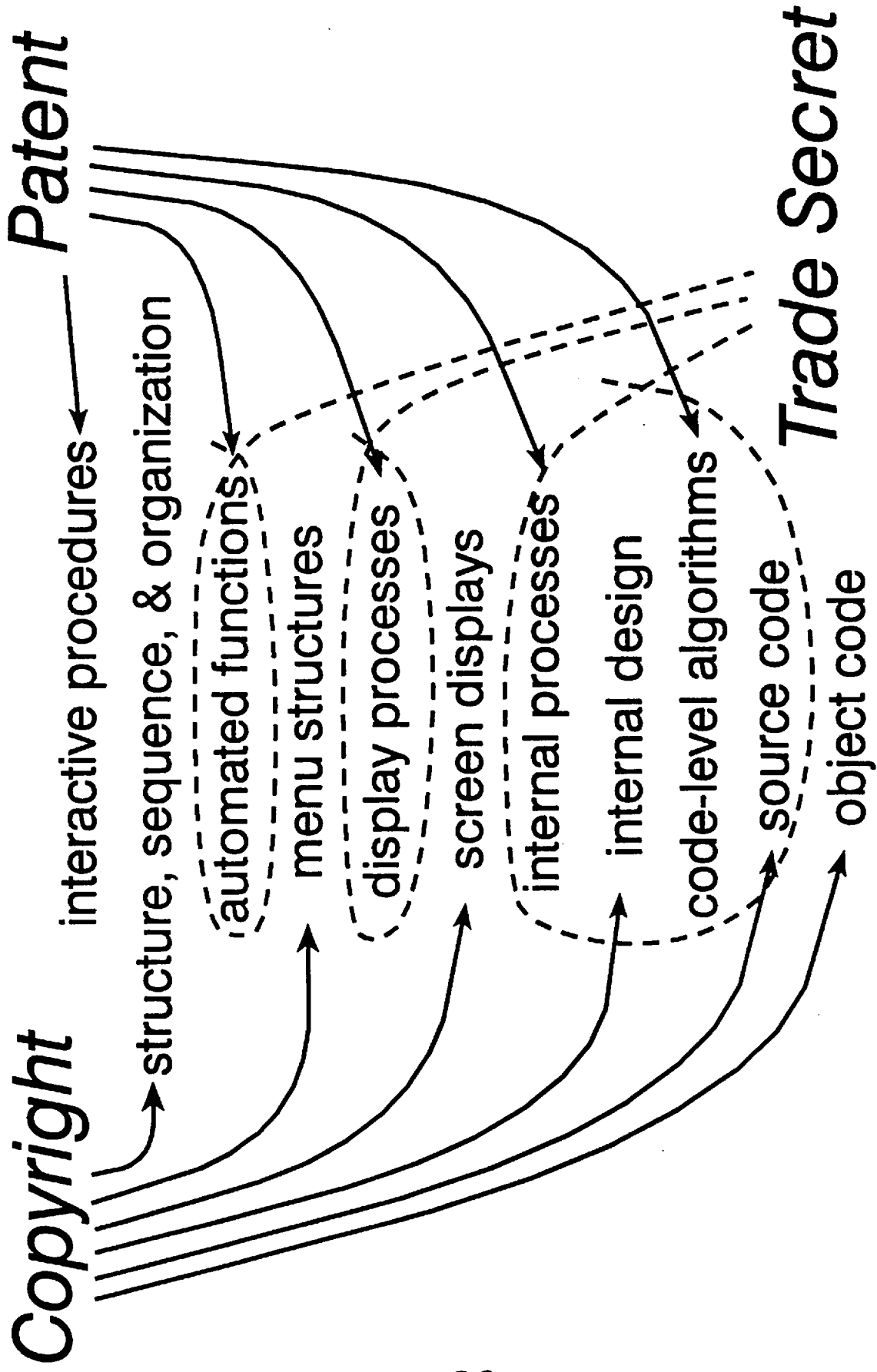
contract

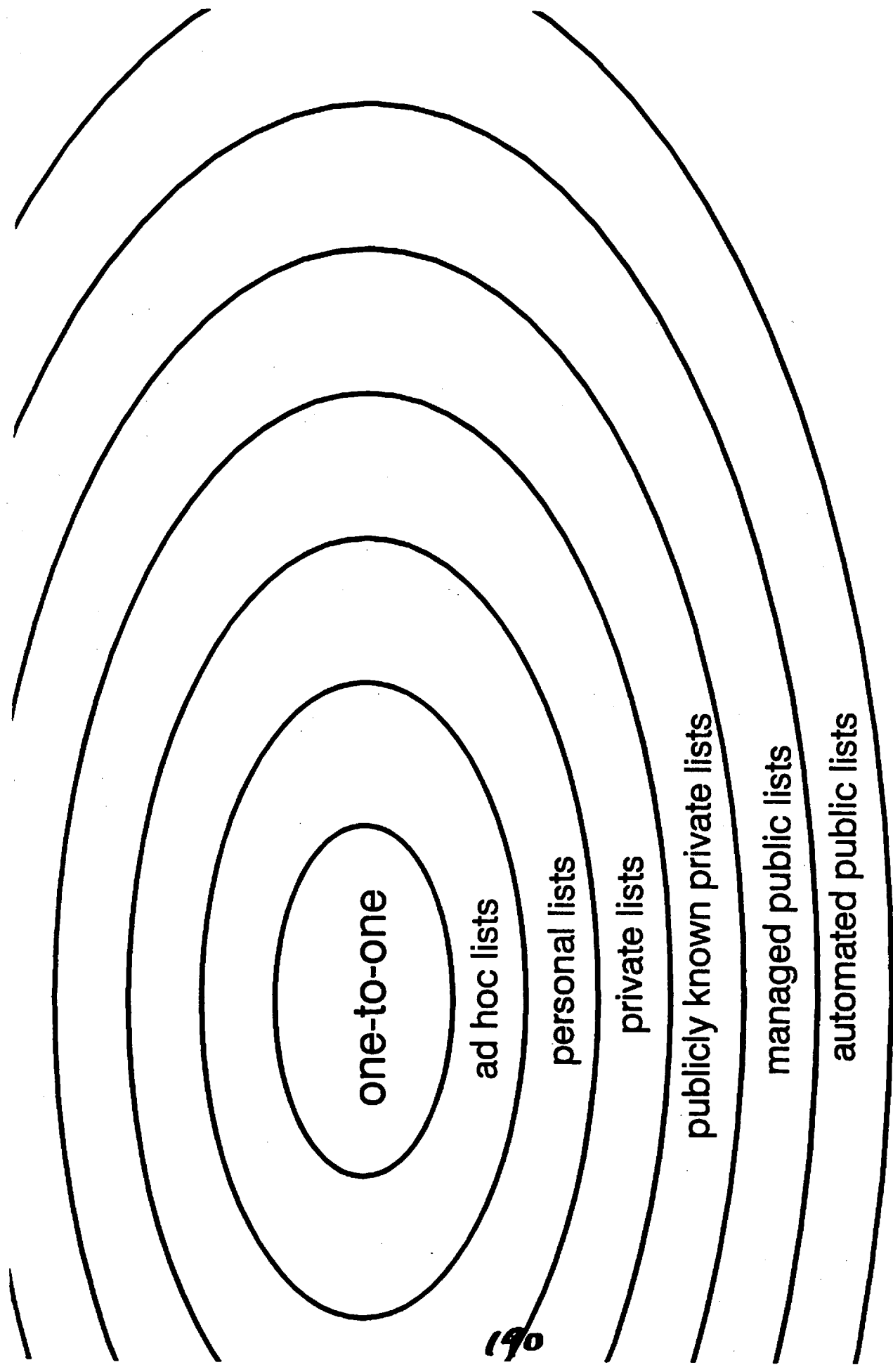
tort

*tort-like
property*

property

→ *"stronger" protection*





one-to-one

ad hoc lists

personal lists

private lists

publicly known private lists

managed public lists

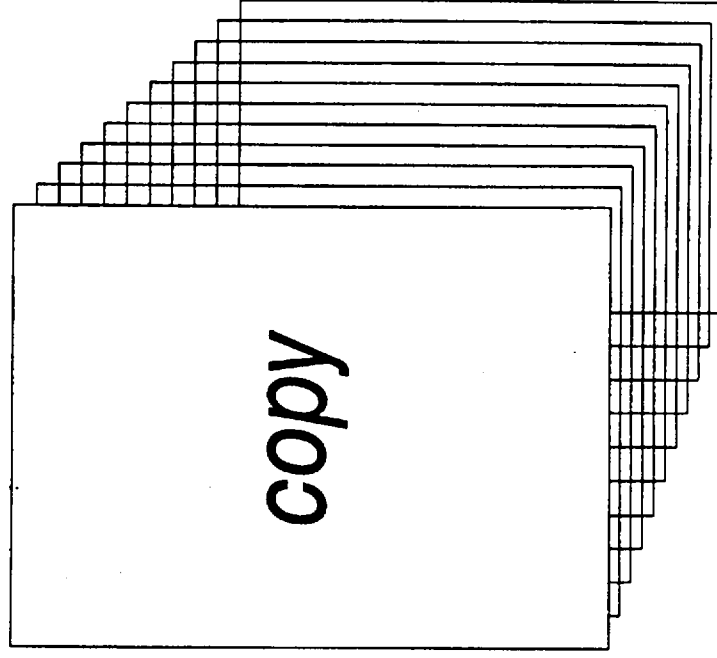
automated public lists

expression

embodied expression

"work"

191



extrinsic

intrinsic

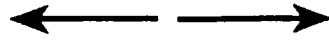
inclusive

publicity &
promotion

addressing
schemes

navigation
systems

interface
design



192

acceptable
use policies

secrecy
agreements

policy-based
routing

copy
protection

exclusive

copyright

patent

authen-
tication

encryp-
tion

policy-defined

technology-defined

copyright owner's rights

repro-
duction

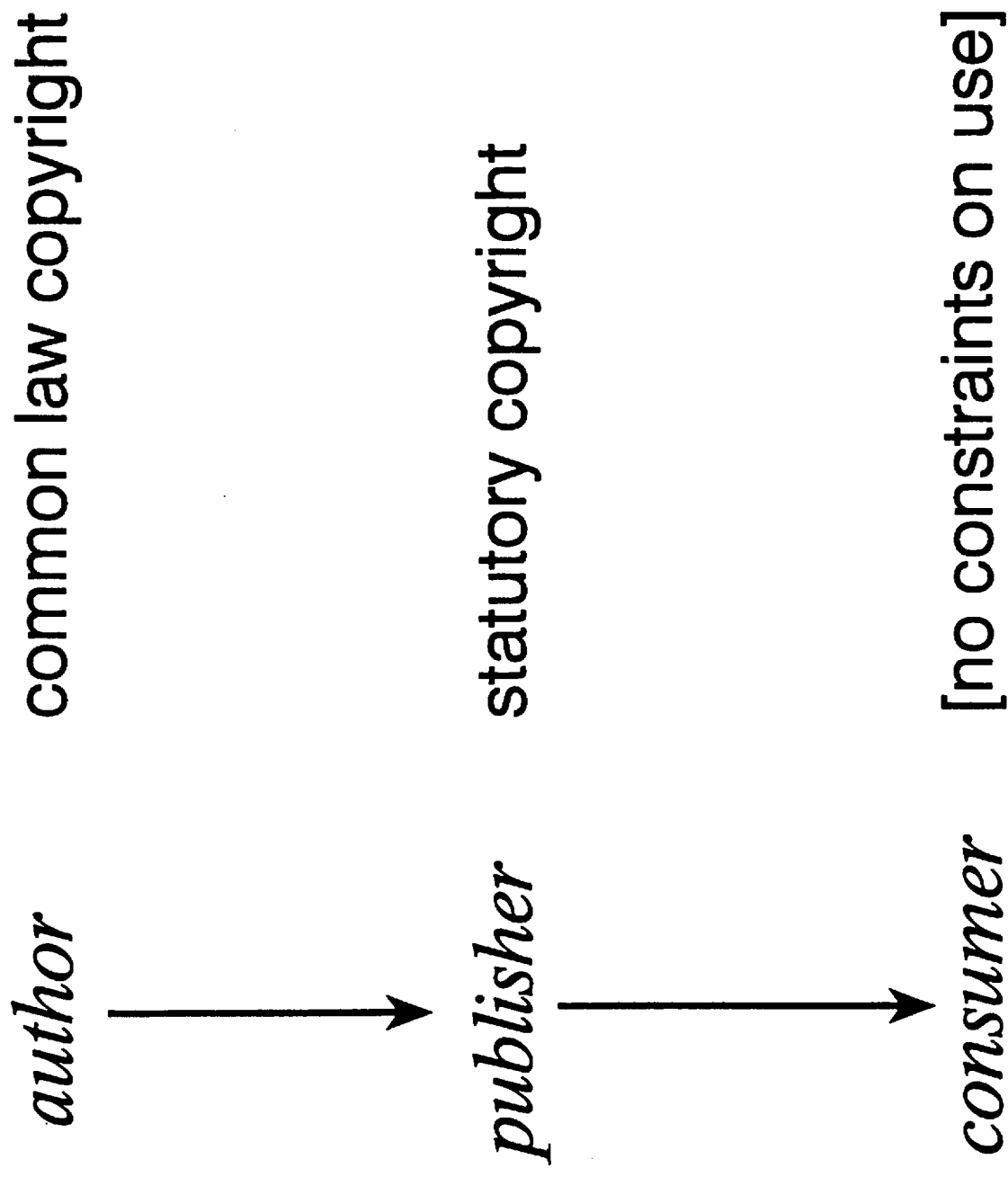
adapt-
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distrib-
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public
perform-
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public
display

user's rights



publisher

statutory copyright



distributor

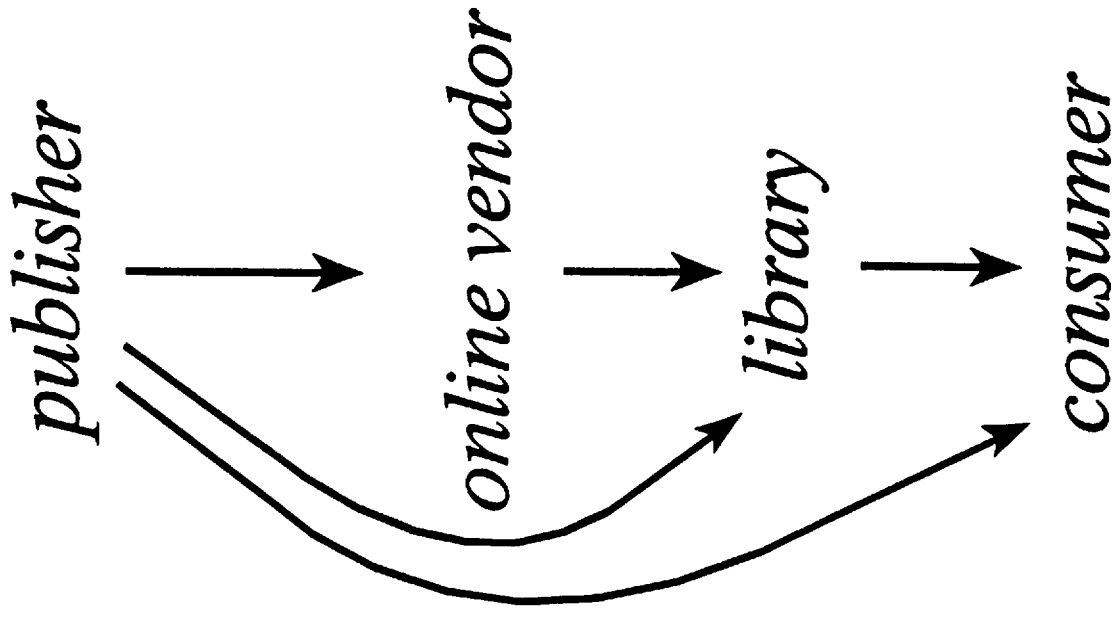
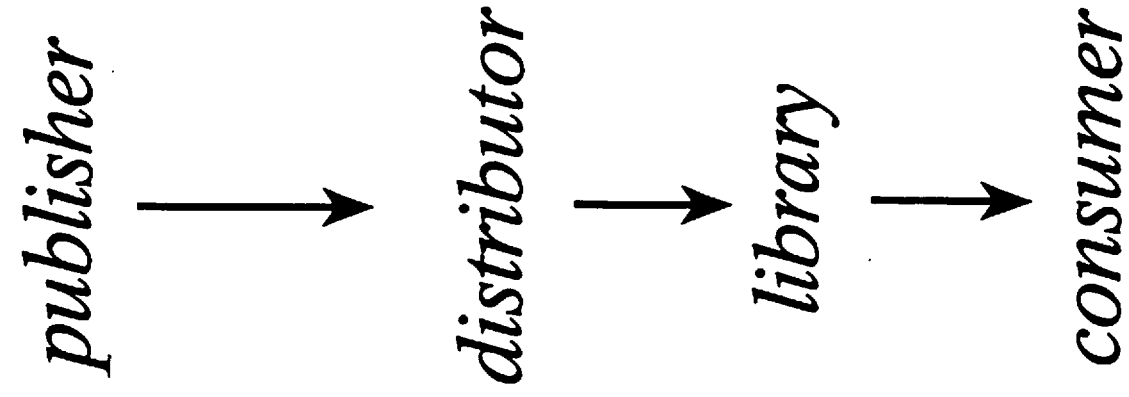
first sale doctrine



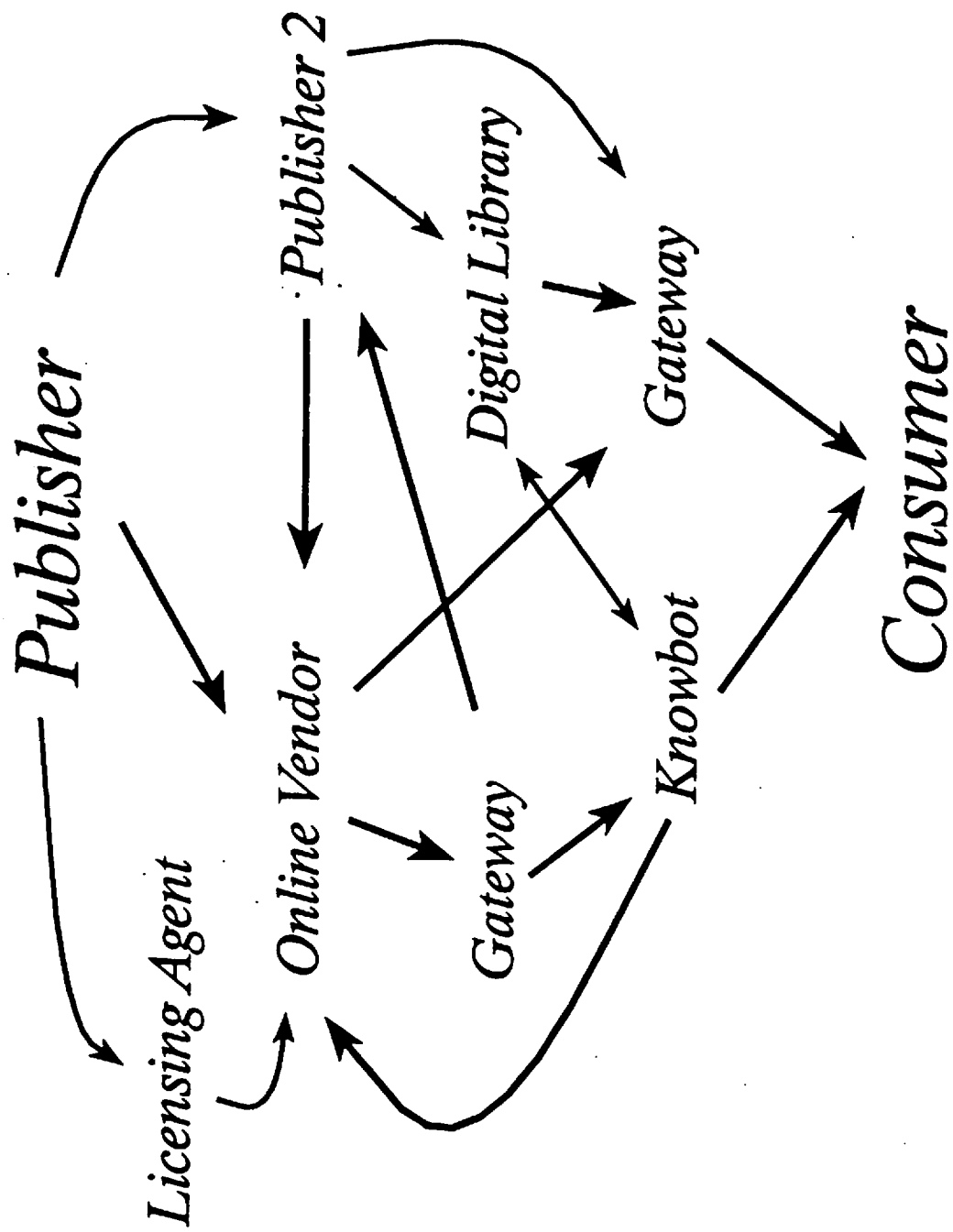
library

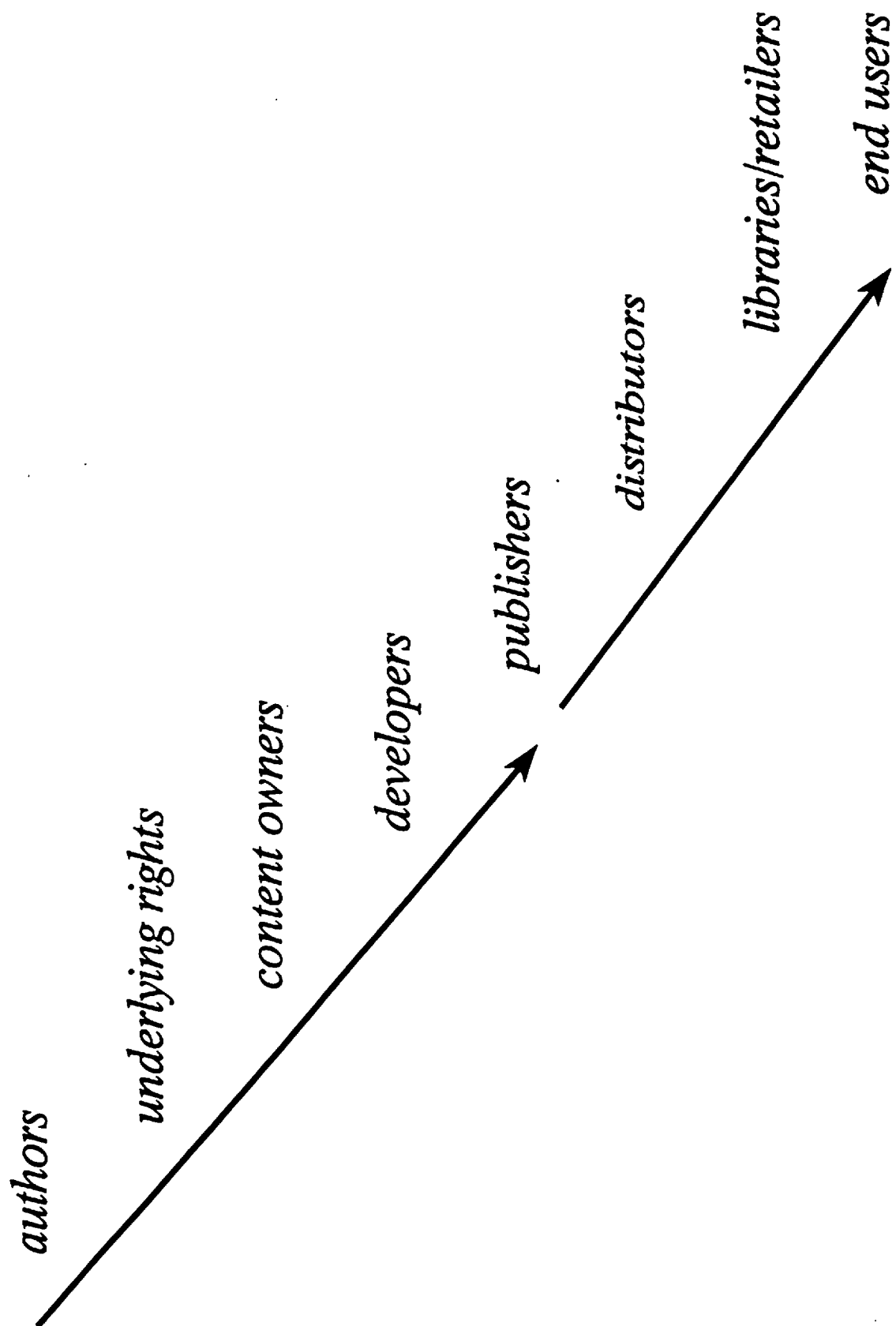


consumer



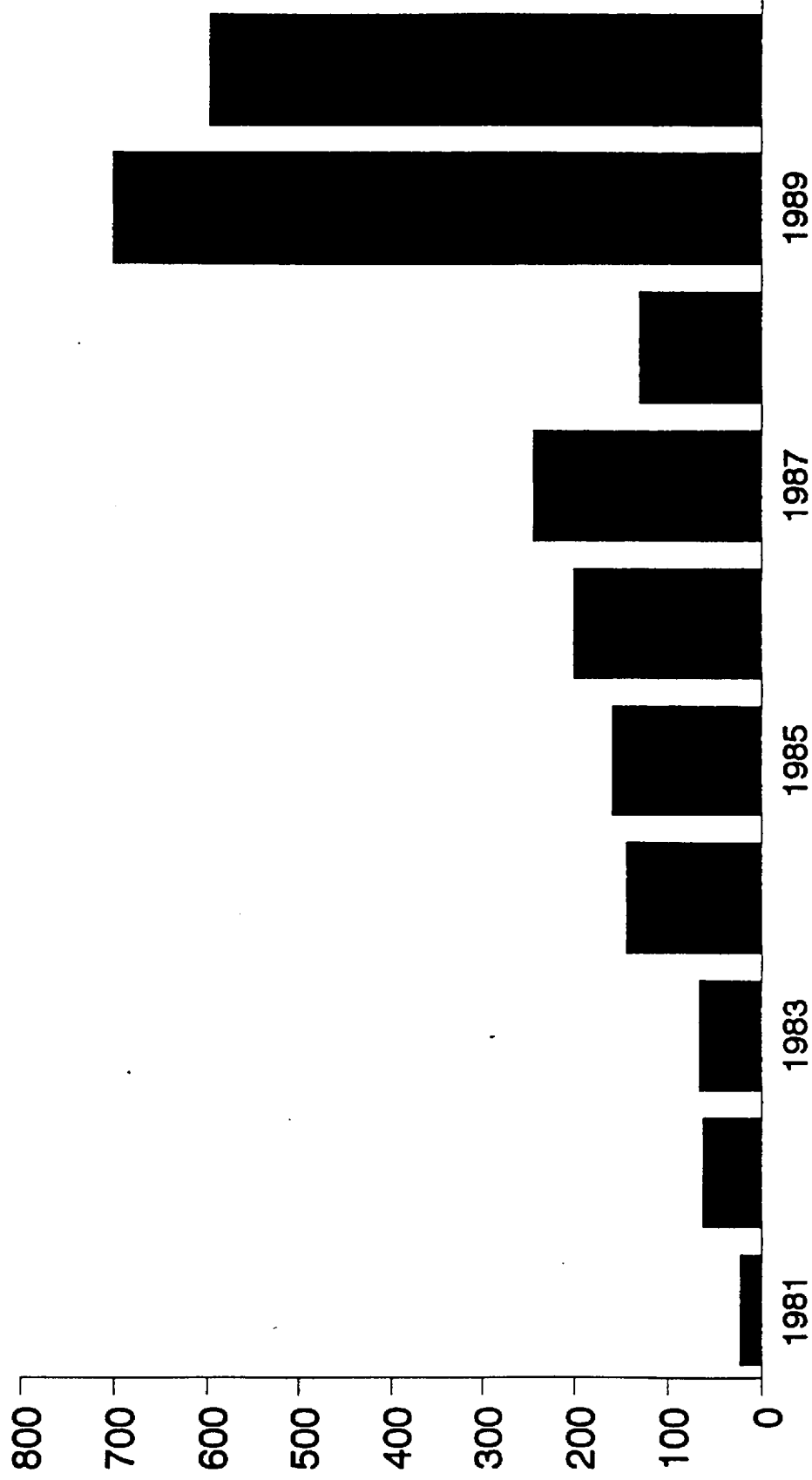
public
display
right /
contract





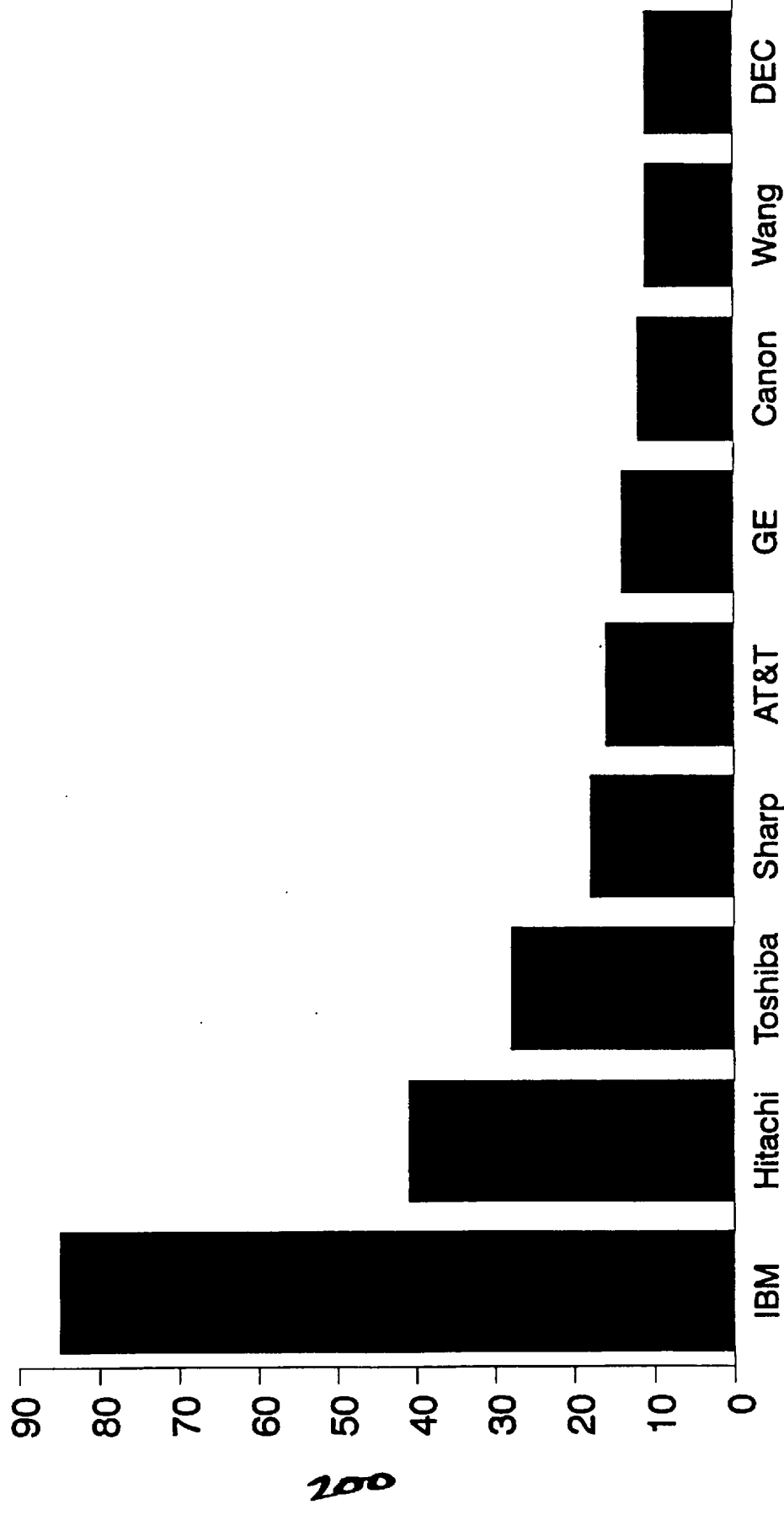
Software Patents: 1981-1990

source: EDS Research, 1991



Software Patents Issued in 1990

source: EDS Research, 1991



Whoever without authority ... uses within the United States a product which is made by a process patented within the United States shall be liable as an infringer....

201

-- *Process Patents Amendments Act of 1988 [P.L. 100-418]*

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