

A trip to Harvard Law School, 10-11 April 1995

I had been invited to participate in the session on "Intellectual Property" of the "Seminar on Information, Law and Technology", organised this semester at the Harvard Law School.

The session was due to start at 16:30. I rose at 5:30 and left home at 6:00 so as to catch my 7:06 flight to Boston; we had an intermediate stop in Chicago, where frozen rain induced a delay of half an hour. Since, in Boston, there was no one to meet me at the airport, I took a cab, but its driver was so incompetent that he dropped me at the wrong side of Campus; fortunately, the weather was nice and my little suitcase light. I arrived at what is now called "Hauser Hall" early in the afternoon.

Shortly after my arrival, two students recorded on video-tape an interview of me; they interviewed me quite nicely, posing sensible questions I could do something with. I am afraid that the interview was the nicest part of my visit.

When we returned from the interview, some more legal professionals had arrived and there was a lively discussion going on. For me the exposure was a cultural shock, instructive, but also rather disorienting. Of course I knew that lawyers are not scientists, yet the atmosphere of a trade school took me by surprise. Of course I knew that lawyers mainly deal with national law, yet I was unprepared for the prevailing parochialism. (Now I come to think of it, the system of common law, based -as it is- on custom and precedent, could very well strengthen this phenomenon.) But the most disorienting thing was that I found myself suddenly submerged in a verbal tradition that was totally foreign to me! They were on the average very verbose - some even repetitive - , they had a tendency to "reason" by analogy and more than once I felt that speakers cared more about the potential influence of their words than about what they actually said. (Are these common professional deformations of the trial lawyer?) I spoke for ten minutes, that is, I tried to do so: after several hours of exposure I no longer knew how to address this crowd.

I gathered that the situation is roughly as follows. There are ideas and these can be expressed. Patent law covers the protection of ideas, copyright law covers the protection of expressions. In order to make copyright law applicable to the protection of software, we are invited to regard programs as "literary works", in particular, to view the binary code as distributed as the "expression" that is protected by copyright law. I think that the analogy between programs and literary works would be considered weak even by medieval standards. For one thing, the analogy fails to reflect that the mechanical transformation of such an "expression" into a semantically equivalent one is now standard practice for more than several decades. (I got the impression that they try to patch this by disallowing such "decompilation"!) The whole effort seems one more demonstration that you cannot adequately deal with radical novelty by analogy.

I spent the night in the Sheraton Commander Hotel. Because the bar keeper assumed that I wanted to look at and listen to a television program,

I went to bed without a nightcap. When I opened my door the next morning, I saw on the floor that the hotel management thought that I would like to read "USA Today". The music I could not escape at the breakfast table was similarly offensive. The previous day the responsible person at Harvard Law School had told me that the hotel had been instructed to send the bill to them; possible, but it was not known at the cashier's desk when I tried to check out.

Due to bad weather in Texas, my return flight via Dallas/Fort Worth had been cancelled. I was rerouted via Nashville, Tennessee. By the time we came there, winds were so strong that only one landing strip could be used. I caught my connection and was home in time for dinner.

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