

## The decentralized information market

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**Q: What do these software patent lawsuits have in common?**

Global Patent Holdings *v* { Green Bay Packers  
Caterpillar  
Kraft Foods

Eon-net *v* { J Crew  
Walgreen  
Linens 'n' Things

Card Activation *v* McDonald's

Antor Media *v* Dole Food

Illinois Computer Research *v* Oprah Winfrey

**A: None of the defendants are software companies**

## Everybody produces software

- Software innovation is not centered at Microsoft, IBM, or Red Hat
- Brookings has a full floor dedicated to information tech
- J Crew and Oprah's IT departments did something innovative enough to run into a patent.

## Industry size matters

- Percent of US businesses implementing pharma methods:  
0% ( $\approx 1,000$ )
- Percent of US businesses implementing business methods:  
100% ( $\approx 25$  million)
- Percent of US businesses processing information:  
100%
- The fundamental difference: information is universal; physical endeavors are not.
- The rest is commentary.

## The patent gnome

One who unfairly takes advantage of informational asymmetries by suing agents who are ignorant of the field of patents in which the gnome works.

The procedure:

1. Get patent on information processing method
2. Wait for someone to independently re-invent
  - a. Easy for information
  - b. Impossible for pharma
3. Profit!!

## The syllogism

- Independent invention is not a valid defense against claims of infringement.
- Millions of businesses are independently inventing methods for information processing.
- ∴ Patents on information will always create problems.

## Questions

- Plain logistics:
  - How can we get 186,727,854 web sites\* in compliance?
  - Does clearing a site or business become a burden when millions of agents need to track millions of other agents?
- How does the standard patent cost/benefit analysis change. . .
  - . . . when there are millions who could invent a given concept?
  - . . . when there are millions who could be sued after a patent is granted?

## Questions, II

- What about Copyright?
  - Allows broad protection (derivative works)
  - Allows independent authorship.
  - Does the added power of patent law provide sufficient added benefit?



## Conclusion

- Patents fundamentally don't work for decentralized industries.
- Information processing is as decentralized as it gets.
- Patent law serves the economy, not patent-holders.
- We need a law that excludes information from patentability, but allows physical, centralized invention.
- It's better to grapple with the difficult question of drawing the line than having no line at all.