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# Information as Property: Humanism or Economic Rationalism in the Millenium?

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Current and traditional legal analyses have repeatedly denied to information the status, quality and incidents of property. In *Breen v. Williams*,<sup>1</sup> the High Court considered the extent to which any proprietary interest could be said to exist in information, articulating the position of Australian law with respect to the protection of any such interests. Brennan CJ was unequivocal, citing Lord Upjohn in *Phipps v Boardman*<sup>2</sup> to the effect that “[i]n general, information is not property at all”,<sup>3</sup> while recognising that any legal protections to be associated with information derived from the courts’ power in equity to restrain transmission in breach of an apprehended confidential relationship. Similarly, Dawson and Toohey JJ conclude that “there can be no proprietorship in information as information, because once imparted by one person to another, it belongs equally to both of them.”<sup>4</sup> While their Honours reflect that Canadian and United States law was, perhaps, developing in such a way as to afford Ms Breen a remedy (citing La Forest J in *McInerney v MacDonald*<sup>5</sup>), it should be noted that such an approach grounds the protection of interest in a fiduciary relationship, and not in the discovery of any proprietary nature of information as such. That is, the approach remains within the bounds of equitable, rather than common law,<sup>6</sup> principle.

On the issue of proprietary rights, Gaudron and McHugh JJ seemingly confined discussion to the actual physical records, rather than the abstract information which comprised them.

In effect, the High Court, in 1996 re-iterated long standing legal principle, relied on by Deane J in *Moorgate*, that :

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1 (1996) 186 CLR 71.

2 [1967] 2 AC 46 at 127-128.

3 *Breen v Williams* (1996) 186 CLR 71 at 81.

4 *Ibid* at 90.

5 (1992) 93 DLR (4th) 415.

6 “Common law” is here to be construed in its narrow sense.

... it ha[s] long been the common law that, in the absence of rights of patent, trade mark or copyright, information and knowledge are not the property of an individual.<sup>7</sup>

His Honour further cites Brandeis J of the US Supreme Court in *International News Service*<sup>8</sup> that that the law did not recognize any general proprietary right in knowledge or information.

Nevertheless, the long-term viability of the common law has been its capacity to adapt to and mirror substantial changes in social practices, assumptions and values (subject to overriding philosophical, moral or policy constraints). Such a quality is most critically required at times of paradigm shifts in social and/or economic understanding. Thus, the emerging rules of commercial law in the latter half of the eighteenth century reflected commercial practice of the time, as the law was developed “to meet the expectations of commercial people of the time”.<sup>9</sup> Lord Mansfield, the principal architect of those developments:

... even had a special group of jurors chosen from the “City” to keep him abreast of commercial practice. In *Miller v Race* (1758) 1 Burr 452; 97 ER 398, in which the Court held that bank notes were negotiable ... he referred repeatedly to the fact that the defendant had taken it “upon the general course of business” or “bona fide, in his business”. With no precedents directly bearing on the case, it was enough that “A bank-note is constantly and universally ... treated as cash”. It was “necessary, for the purposes of commerce” that this business practice should be recognised as law.<sup>10</sup>

While the parallels between Mansfield’s practice and the present problem are imperfect,<sup>11</sup> the preservation of the arbitrary distinction between property *per se* and information in the face of social and economic changes at the end of the century may require reconsideration, for current changes are potentially as far-reaching as any which attended the Industrial Revolution.

## 1. The Macro-economics of Information

The analysis of large-scale economic activity has traditionally sought to classify the nature of “work”, defining it by reference to the raw materials of enterprise. Surprisingly, however, it is only since 1935 that any differentiation beyond the primary/

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7 *Moorgate Tobacco Co Ltd v Philip Morris Ltd* (1984) 156 CLR 415 at 441.

8 *International News Service v Associated Press* (1918) 248 US 215 (63 Law Ed 211)- see *infra*.

9 A MacAdam and J Pyke *Judicial Reasoning and the Doctrine of Precedent in Australia* Butterworths, Sydney, 1998, p353.

10 *Ibid*, author’s emphasis.

11 For example: (i) the use of commercial “wisdom” to inform and develop commercial law differs from the development of general law propositions - which extend beyond “mere” commerce - from the habits of commerce; (ii) Mansfield’s “freedom” in *Miller v Race* derives from a lack of precedents, whereas there is ample precedent in superior/appellate courts that information is not property. See *infra*.

secondary distinction has occurred, with Fisher<sup>12</sup> in 1935 and later Clark (1940)<sup>13</sup> floating the concept of tertiary industries - broadly described as "service-related". Such tertiary industries, however, represent only a residual class (defined by exclusion). Nevertheless, it was common to describe advanced social organisations as "service economies" once "[t]ertiary sector employment overtook other categories as the largest single group within the labour force."<sup>14</sup>

More recently, it has been argued that a fourth industry sector exists, defined not as a residual class, but by its exclusive concern with the creation, processing, storage and transmission of information across all sectors.<sup>15</sup> More than merely a journalistic expression, the "information age" reflects a substantial and fundamental change in the nature of "post-industrial"<sup>16</sup> economic organisation, as the dominant economic forces become associated with information transactions.

Such a sector must further entail the recognition of that information as its principal asset. "Information" *per se* is to such quaternary enterprises what commodities are to the primary sector, or raw materials to the manufacturing sector, although the advent of hybrid business activities, in which "durable goods ... take on information qualities"<sup>17</sup> suggests that analyses which depend on simple correspondences oversimplify the actuality involved. Furthermore, the transfer of economic power to information-based enterprise seemingly strengthens the argument that information, as the principal resource of the dominant economic sector, warrants legal protection which parallels the legal property in goods which primary and secondary enterprises enjoy over their stock in trade. Such a development would operate to re-inforce and extend the proposition that (at appropriate levels of abstraction) intellectual property law generally operates in "advanced" societies to restrict access to information.<sup>18</sup>

It remains, therefore, to examine whether a legal regime which denies, as a base philosophy, a proprietary nature to information is an appropriate vehicle for adjudication within social structures such as Australia which have moved into such

12 A G B Fisher *The Clash of Progress and Security* Macmillan, London, 1935.

13 *Passim* in C Clark *The Conditions of Economic Progress* Macmillan, London, 1940.

14 *Ibid*, p2.

15 See J Bredt "The Queensland Information Sector - a 1991 Definition: Methodological Issues and Implications for Education and Training" unpublished Master of Economic Studies thesis, University of Queensland, Department of Economics, 1995.

16 The phrase is first used by Daniel Bell in 1973.

17 J Reidenberg "Information Property: Some Intellectual Property Aspects of the Global Information Economy" June 1988 *International Computer Law Adviser* 7 at 7.

18 M Pendleton "Intellectual Property, Information-based Society and a New International Economic Order - The Policy Options?" [1985] 2 *EIPR* 31. This postulate forms the third of a series of nine fundamental propositions about intellectual property as a coherent system of law. But cf Wright "Property, Information and the Ethics of Communication" (1994) 9 *IPJ* 47, which develops the thesis that intellectual property law generally "plays a central role in the creation and maintenance of cultural exclusion, race and class disharmony and the expansion of corporate power" (p74) - qv the reluctance of advanced nations to acknowledge copyright in folklore and analogous artefacts of cultures that are, in effect, minorities.

an identifiable economic reality, and whether the wholesale adoption of “commercial” practice (which generally recognises information as a tradeable commodity) is appropriate in the formulation of a legal response which is not, in itself, confined to commerce:

Businesses, governments, and the general public today operate in a more information-dense environment than did their counterparts of a few decades ago. They increasingly rely on and consume information. Therefore, the task confronting commercial law is the formulation of principles that will facilitate the development of information transactions and products to meet this burgeoning demand, while preserving fundamental political and social values.<sup>19</sup>

Arguably, in any case, the nature of information (and certainly incidental characteristics of information, such as its transmissibility etc) is also so fundamentally different from that which obtained at the time that the current view was formed as to warrant a re-examination of the fundamental propositions which support the view that information is not property.

## 2. Definitional Matters

The inherent nature of information makes it difficult to conceive of it in a proprietary framework. Its very intangibility, the wide variation in types of information, the varying degree to which the “owner” of information may want to assert rights over it serve to differentiate information from the other, more traditional forms which are the subject of proprietary rights. The problem is exacerbated by a lack of any clear and universally relevant definition of information itself. Wright highlights the underlying friction between two distinct definitional approaches.<sup>20</sup> If information is conceived as synonymous with “data”, it presents purely as a commodity, in which case:

... it will be defined as if it were an object that can be separated and dealt with quite apart from the relationships within which it is created.<sup>21</sup>

Information, that is, is reified, and derives value solely from its capacity for exploitation.

Conversely, a broader view sees information as:

... the substance of a process of communication without which human relationships

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19 R T Nimmer & P A Krauthaus “Information as a Commodity: New Imperatives of Commercial Law” (1992) 55 L & Contemp Prob 103.

20 S Wright “Property, Information and the Ethics of Communication” (1994) 9 IPJ 47 at 50.

21 *Ibid.*

would be impossible. Information then becomes an organic and subjective pattern of symbols that cannot properly be understood outside the context in which it is created.<sup>22</sup>

Thus, the view inherent in the information theoretic model is largely confined to the former style of definition, while the traditional (and current) legal paradigm - in which the appropriate protection for information lies in equitable principles of conscience and confidence - reflects (at least subconsciously) the latter.

Similarly, "property" is itself not a wholly coherent phenomenon, but is heavily dependent on context. Thus, what is property for the purposes of succession may differ markedly from what is encompassed by the term for the purposes of the Commonwealth's constitutional power to "acquire property".<sup>23</sup> Conventional views of property, however, focus on concepts such as the right to possess, use and enjoy, exclusionary capacity and alienability. None of these phenomena is inherently incompatible with information (in the first definitional domain), and neither does the essential intangibility of information (as distinct from its storage medium), of itself, preclude a proprietary analysis. The orthodox position derives, then, not from any structural incapacity of information to be property, but as a policy choice<sup>24</sup> (or through a conservative inertia).

That choice, however, has significant implications in terms of accessibility, proof and available and appropriate remedies. To stress, as the current state of Australian law does, that an action for breach of confidence protects "ownership" in information by reference to equitable, rather than proprietary, principles alters the framework in which the primacy of any such rights operates - not least because proprietary rights exist as of right, while rights inherent under an equitable scheme remain *ex hypothesi* subject to discretionary considerations of the court, and are seemingly, therefore, less predictable or definable than proprietary forms.

Nevertheless, the action for breach of confidence remains as one means by which "information is identified, classified and assessed for the purpose of assigning or not assigning legal protection".<sup>25</sup> Moreover, it stands seemingly apart from the statutory regimes which serve to provide an inherently commercial focus to the law's intersection with dealings in information, or the exclusively commercial tort of passing off. Unlike that tort, breach of confidence does not fit easily into the

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22 *Ibid.*

23 If, for example, the reasoning implicit in *Georgiadis v Australian and Overseas Telecommunications Corporation* (1994) 179 CLR 297 is followed to its natural conclusion, then it may be possible to assert a constitutional right to just terms on the acquisition of [certain forms of] information by the Commonwealth, not solely because some specific rights arise under a statutory regime of intellectual property law - cf US decisions (*Ruckelhaus v Monsanto Co* 467 US 986; *Carpenter v US* 108 S Ct 316) concerning the proprietary nature of information for the [limited] purposes of defining the limits of Amendment V, US Constitution insofar as it refers to the taking of private property for public use without just compensation; cf Australian Constitution, s51(xxxii).

24 See P Samuelson "Information as Property: Do *Ruckelhaus* and *Carpenter* signal a changing direction in intellectual property law?" (1989) 38 *Catholic University Law Review* 365 at 371.

25 Wright *supra* n18.

definition afforded by WIPO, which is directed towards [i] literary, artistic and scientific works; [ii] artistic performance, photography and broadcasting; [iii] inventions in various fields; [iv] scientific discoveries; [v] industrial design; [vi] trade mark, service mark business name and reputation; and [vii] unfair competition and other rights arising out of industrial, scientific and literary creations.<sup>26</sup> Relief, while dependent *inter alia* on “significance” to the plaintiff, is not confined:

... necessarily in the sense of commercially valuable, *Argyll v Argyll* [1967] Ch 302 at 329, but in the sense that preservation [of confidentiality] is of substantial concern to the plaintiff.<sup>27</sup>

*Private* concern or embarrassment, that is, is *prima facie* sufficient detriment to ground an injunction. In general, it does not presuppose (as do most of the subsets of intellectual property), nor does it demand, commercial operation.<sup>28</sup>

### 3. Underlying Assumptions

The almost unconstrained coverage of the concept of “information”, ranging from the simplest individual and unitary observation through to the most complex amalgam of data, process and mechanism, as well as the existence of such information on a public/private domain continuum, necessitates the separation of information *in specie* into mutually exclusive forms, the consequences of which determination governs protectability. The development of sustainable criteria for that separation remains a primary responsibility for any legal system (in either a macro or micro context) as it comes to terms with information, balancing within that process such issues as incentives to innovate, community interests in dissemination, innominate “natural rights to personal autonomy over information”,<sup>29</sup> or even constitutional principle.<sup>30</sup>

The nature of rights associated with information depends (at least to some extent) on the philosophical or jurisprudential assumptions which inform the fashioning of legislative or judicial protections. Underlying the broad notion of intellectual property (and encompassing its varied manifestations of copyright, trade marks, passing off, designs and patents) are two concepts: one essentially moral, the other

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26 Article 2, Convention for the Establishment of WIPO, 14 July 1967.

27 *Moorgate* (1984) 156 CLR 415 at 435 per Deane J.

28 The breadth of coverage of copyright, and its conferral of exclusive rights *ab initio* are the other significant exception to the presupposition of commercialism.

29 Discussed in J McKeough & A Stewart *Intellectual Property in Australia* 2nd ed Butterworths, Sydney, 1997, p44-45 note 17. The espousal of such an innominate right (founded in human rights discourse rather than accepted legal analysis) effects a counterpoint to the increasing power generated by the storing and collating of personal information.

30 The US Constitutional protections of freedom of expression has been identified as one inhibiting factor in the development of a proprietary analysis of information in US jurisdictions - see Samuelson, *supra* n24 p365.

economic, although there is some degree of overlap. These forces have been identified both with the initial creation of rights in intellectual property and the subsequent extension of the field covered by such law.<sup>31</sup>

The former, moral, ideal is expressed within the maxim adopted by the US Supreme Court in *International News Service*<sup>32</sup> that there is an inherent unfairness in “reaping where one has not sown”.<sup>33</sup> And while it is tempting to equate the moral underpinning of intellectual property with the enforcement of rights in information through equitable principles (derived from notions of conscionability), the action for breach of confidential information is far more narrowly founded, requiring specific findings as to the relationships governing the parties and the information itself. It is not sufficient, for example, that the information be of a confidential nature. That is merely a threshold which must be overcome. It is the circumstances in which it is imparted which govern protectability<sup>34</sup> and specifically the relationships which governed the transmission of the information. Such examination clearly places the legal view of information (for the purposes of the equitable action) within the intellectual domain afforded by the contextual, rather than the commodity-based, definition.

Yet, while the “reap/sow” view supporting intellectual property seems, through its phraseology, to import a moral component, it is nonetheless closely connected to economic rationalisation, either through Lockean principles, Marx’s labour theory of value *et al* - ie the right to reap is derived from activities which may be defined as economic.

The more classically “economic” foundations of intellectual property protection have also been subject to substantial criticism, not least that the creation of monopoly rights is inherently anti-competitive (and therefore, within the framework of classical economics, unlikely to bring about the maximised efficiency of resource utilisation).<sup>35</sup> Moreover, the wholesale reliance on economic theory to support legal principle leaves out of the equation substantial inputs which are not the traditional subject matter of economic thought. Thus, the founding of rights in the creation (or synthesis) of information-as-commodity ignores the necessary relationship between present and past knowledge. As Pendleton suggests:

... [i]n a technologically advanced society, no one can meaningfully be said to create information; rather, they may innovate and synthesise, but necessarily they must build on existing stocks of knowledge.<sup>36</sup>

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31 WJ Gordon “On Owning Information: Intellectual Property and the Restitutionary Impulse” (1992) 78 *Virginia Law Review* 149.

32 (1918) 248 US 215.

33 The phrase is of considerable antiquity - cf *Millar v Taylor* (1769) 4 Burr 2303 at 2404.

34 *Saltman Engineering Co v Campbell Engineering Co* (1948) 65 RPC 203; cf *Coco v AN Clark (Engineering) Ltd* [1969] RPC 41 at 47.

35 R Cooter & T Ulen *Law and Economics* Harper Collins Publishers, New York, 1988, p135ff.

36 Pendleton *supra* n18, p31.

In such a context, Pendleton concludes that “information ought not always be treated as a commodity, but rather as a community resource”, in which case the legal ordering concepts of private property are not appropriate foundations for analysing rights in information - at least where information is communally “owned”.<sup>37</sup> Distributive justice analyses, that is, would require a broader right of access to such categories of information than a property/monopoly regime admits.<sup>38</sup>

While in the United States, tort law (and particularly product liability/negligence) has been subjected to minute economic analysis, the economics of resource utilisation has not yet been applied as “lavishly” in the context of intellectual property.<sup>39</sup> In any case, it is doubtful whether the singular economic rationalism inherent in such an approach - whether to tort law or intellectual property rights - is an acceptable alternative within the present (or any imagined) Australian social context.<sup>40</sup> Indeed, the current approach to confidential information can be applauded specifically because it operates from a “more fluid and ethically centred definition of information [than merely information-as-commodity]”<sup>41</sup> - considerations that would sit uncomfortably within a purely economic analysis, yet which do not constrain the application of more commercial concerns in other spheres of intellectual property, whose natural domain is commerce.

As such, the retention of the equitable analysis of information as an adjunct to those commercially-oriented regimes offers an alternative, and more humanistic jurisprudential *desideratum* (even if subject to criticisms that the concept of “confidentiality”, as applied by the courts, is an “outmoded” concept,<sup>42</sup> or the general concern that highly discretionary analyses are inevitably “unruly” unless constrained by coherent intellectual principles.)

37 While “communal information” may be similar to the notion of information in the public domain, the two concepts are discontinuous, at least insofar as communal ownership may reflect social values, whereas “public domain” reflects the ... The former is therefore normative, while the latter is determined empirically.

38 Concepts of distributive justice, while *informed* by economic analysis, are neither constrained by it, nor necessarily tied to dominant modes of (at present, rationalist) economic thought, preserving a (broadly speaking) equitable view of social organisation.

39 Gordon *supra* n31, p161. Perhaps the most famous (and extreme) example of applying economics to law is to be found in the judgment of Learned Hand J in *US v Carroll Towing Co* (1947) 159 F 2d 169, where the “equation” determining a reasonable burden of precaution is examined as a function of the economic cost to the manufacturer and the probability of resulting damage. Perhaps it should be noted that an economically driven approach to information as property would avail Mrs Breen not at all, for no economic analysis could reasonably vest property of information solely by reference to its subject matter, and disregard the skill/labour components applied by Dr Williams in the production and maintenance of his clinical records.

40 That is, the adoption of economic rationales for legal principles is, as Dworkin suggests, itself a value: “The present question is not whether a society that follows the economic analysis of law will produce changes that are improvements in wealth with nothing else to recommend them. The question is whether such a change would be an improvement in value. That is a question of moral philosophy.” Ronald Dworkin, *Is Wealth a Value?* (1980) cited in MDA Freedman *Lloyd's Introduction to Jurisprudence* 6th ed, Sweet & Maxwell, London 1994, p455.

41 Wright, *loc cit*, p67, discussing *Stevens v Avery* (1988) 11 IPR 439 (Ch)

42 McKeough and Stewart *supra* n29 p74.

It is, perhaps, surprising, then, that suggestions of unifying intellectual property law under the single umbrella of “valuable commercial property”,<sup>43</sup> (which essentially adopts the first definitional domain) should seek to define infringement in terms which are inherently equitable:

[a] test of infringement could be devised based simply upon whether the defendant has unjustly benefitted from the labour, skill, effort and investment of the plaintiff - in other words, infringement by taking unacceptable short-cuts.<sup>44</sup>

#### 4. US Jurisprudence

United States jurisprudence has demonstrated a long-running ambivalence in relation to the information as property debate. In *International News Service*, the majority of the Supreme Court sought to place “news” information in an undefined category of “quasi-property”,<sup>45</sup> its inchoate status deriving from a recognition of the transient nature of the value of news, specific practices within the newspaper industry, as well as the problem of applying a property status to information as it related to the parties (both newspaper proprietors) while acknowledging that, as against the public at large, no such proprietary interest could be asserted by a newspaper.<sup>46</sup> There was, in the majority opinion, however, no serious exploration of the consequences of treating information as property.

Separate opinions by Brandeis and Holmes JJ threw considerable doubt on the information-as-property approach. Holmes J indicated that exclusionary rights (which formed the basis of proprietary ownership) were not necessary to provide a just result (relying instead on the “American” tort of unfair competition.)<sup>47</sup> Brandeis J, however, was concerned as to the stunning breadth of rights that recognition of information as property - founded solely on the expenditure of time, money and energy - would engender. Given, that is, the expansive nature of information, the concession of property rights without a set of clearly articulated criteria to confine the operation of the grant of a proprietary interest<sup>48</sup> fails to execute the most basic requirement of a legal analysis of information - namely defining what information is protectable. Moreover, his Honour expressed substantial reservations over the

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43 See Pendleton *supra* n18 p34. The proposition derives from the fundamental observation that “the basic subject matter of intellectual property is information” (p31).

44 *Ibid.* Cf Holmes J’s characterisation of information rights (in a copyright case) that they are “not directed to an object in possession or owned, but in vacuo so to speak. It restrains the spontaneity of men when but for it there would be nothing of the kind to hinder their doing as they saw fit.” *White-Smith Music Publishing Co v Apollo Co* (1908) 209 US 1 at 19.

45 (1918) 248 US 215 at 235.

46 See Samuelson *supra* n24 p390ff.

47 *International News Service v Associated Press* (1918) 248 US 215 at 246. Presumably, the *Trade Practices Act* 1974 (Cth) provisions (s52) would provide an analogous solution in contemporary Australia, where the “unfair competition” analysis is not recognised.

48 *Ibid* at 262ff per Brandeis J (dissenting).

implications for such an analysis with regard to public interest,<sup>49</sup> and recognising that the ramifications of accepting information as property were so expansive that altering the then current law was a legislative, rather than a judicial, function.

While the *International News* approach fell into desuetude after a brief rash of cases led courts to confine the decision essentially to its facts,<sup>50</sup> later decisions such as *Ruckelhaus*<sup>51</sup> and *Carpenter*<sup>52</sup> have seemingly re-opened the door to affording proprietorial rights over information - *Ruckelhaus* in the context of just compensation provisions in the US Bill of Rights, *Carpenter* in the context of mail fraud statutes designed "to protect individual property rights".<sup>53</sup> However, Brandeis J's criticism of the majority decision in *International News* has been leveled at both latter decisions, with the Court seen as using "property" as a means to securing a just result, "without giving serious thought to the consequences for future cases, and without perceiving what a fragile base this cluster of precedents provides for such a significant legal proposition ...".<sup>54</sup>

## 5. Conclusion

At the heart of any change in the paradigm underlying the legal approach to information lies the appropriate definition of information, specifically directed to confining the circumstances in which information *in specie* can be viewed as property. Recognising the tradability of information, and applying the insights of economics into the fundamental changes occurring in post-industrial culture, leads inexorably to the view that information is property (although it has been recognised that "value" does not necessarily ground a proprietary claim).<sup>55</sup>

Judicial implementation of such a view (a latter-day Lord Mansfield approach), would, however, be untenable within the contemporary dilemma, since:

- there is abundant unqualified precedent which would need to be overturned or circumvented; and
- the reliance on commercial practice to inform a developing commercial law is different in kind from the wholesale application of a precept of economic analysis applicable essentially only in a commercial or quasi-commercial environment to a branch of law whose boundaries (at least through the medium of the action for breach of confidential information) transcend commerce.

It is, in any case, unlikely that Mansfield's method extended to the uncritical

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49 *Ibid.*

50 See E Kitch & H Perlman *Legal Regulation of the Competitive Process* 3rd ed, 1986, p505, cited by Samuelson, *supra* n24, p393 note 174.

51 *Ruckelhaus v Monsanto Co* 467 US 986

52 *Carpenter v US* 108 S Ct 316

53 *Ibid* at 320.

54 Samuelson *supra* n24, p387.

55 See eg *International News Service v Associated Press* (1918) 248 US 215 at 246 per Holmes J.

acceptance of commercial practice without reference to or guidance from analogous legal and moral circumstances.

Equally, however, the substitution of a proprietary right for a right enforceable in equity or through statute offers, in itself, no solution to the problem of limitation (any more than the broader development of current intellectual property law, which limits by reference to a range of characteristics such as originality *etc* within each of the component regimes). Nonetheless, the inevitable extension or expansion of commercial rights in information (either in volume or conceptual breadth) which attends the transition to, and development within, post-industrial social organisation may demand a “moral” counterpoint to afford protection to information (and its “owners”) whose value is not essentially commercially exploitable, or where substantial differences in power and control characterise the transfer of information.