

5 Big Bang Theory of the Internet



Peter S. Vogel

Gardere Wynne Sewell LLP

VogelITlawBlog.com

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"On the Internet, nobody knows you're a dog."

Feds Declare that Blogs and Social Networks are Public Meetings

Posted on April 11, 2010 by Peter Vogel

For purposes of dealing with web 2.0 the [White House Memo](#) released on April 7, 2010 about social media specifically states that "interactive meeting tools—including but not limited to public conference calls, webinars, blogs, discussion boards, forums, message boards, chat sessions, social networks, and online communities—to be equivalent to in-person public meetings." The White House Memo is a follow-up to President Obama's January 21, 2009 (day after the President was sworn-in) "calling for the establishment of 'a system of transparency, public participation, and collaboration.'" Fascinating development that blogs, Facebook, LinkedIn, Twitter, MySpace, Yelp, and the like are public meetings which means that one should expect little privacy from use of these online services.

Majority of Government Agencies Use Social Networks

This report states that a [majority of government agencies now use social networks](#) is hardly a news flash, but put in context of the White House's Memo that use of social networks are public meetings may change the public view of how they communicate. Of the [400+ million Facebook](#) members of an estimated 70% are outside the US, and one may wonder how communications across international borders impacts the declaration that social media is public meetings.

Yelp and the Business of Extortion 2.0

This recently filed class action [suit accuses Yelp](#) of extortion to get bad comments removed from Yelp and lower rankings by reviewers. It remains to be seen whether this case will succeed, but if Yelp is considered a public meeting by the White House it makes one wonder how extortion fits in. Not to mention that the [50 million a day of tweets](#) on Twitter are considered public meetings, even though at least 14,000 are followers of a Doonesbury's cartoon character Roland Hedley! Web 2.0 is definitely taking us in interesting directions!

 TAGS: [Facebook](#), [Internet Privacy](#), [LinkedIn](#), [MySpace](#), [Web 2.0](#), [White House](#), [Yelp](#), [twitter](#)

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1st Big Bang >>>1890 Census

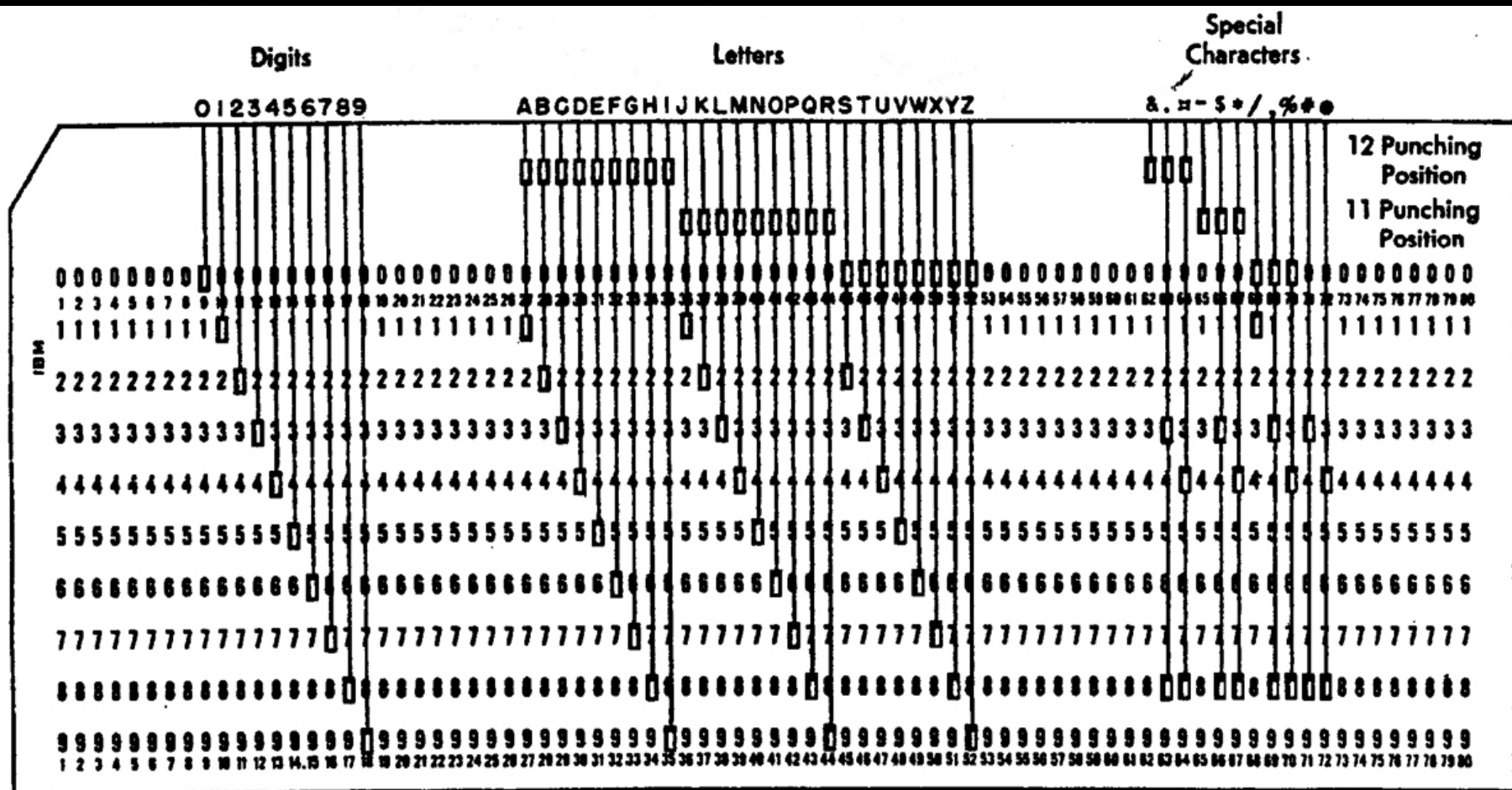
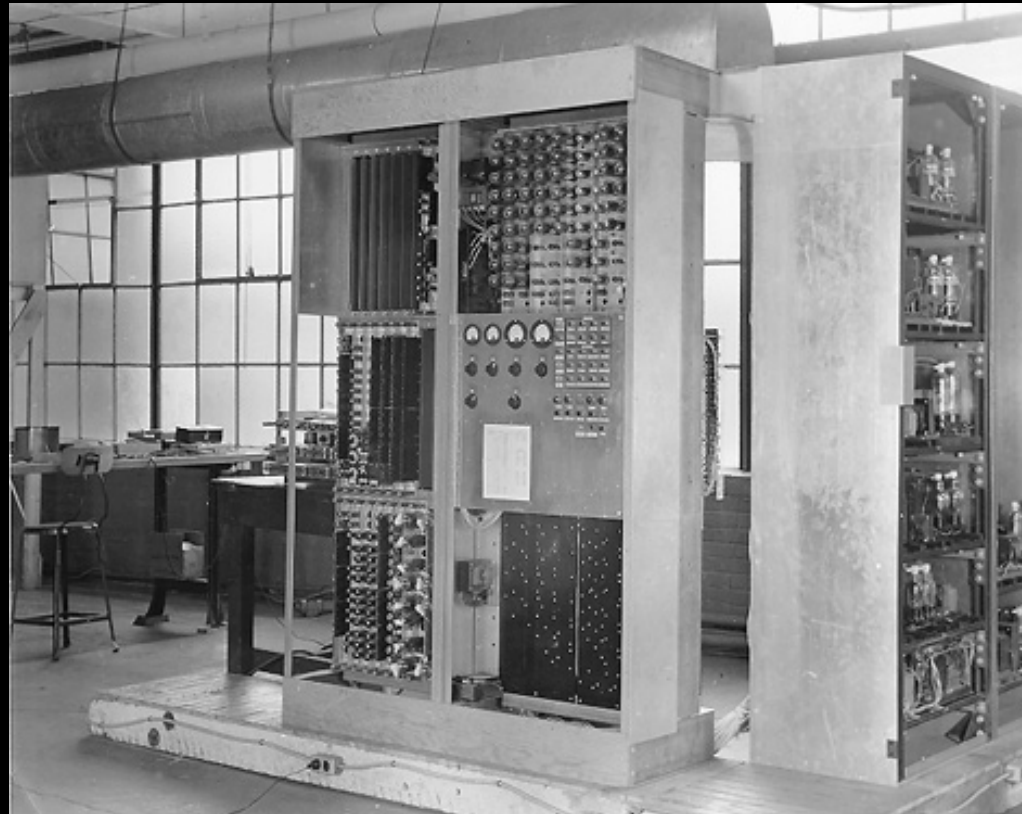


Figure 2. Punching Positions in Card

Dr. Herman Hollerith (1860-1929)

2nd Big Bang >> World War II

Invention of Computers



BROWN SHOE CO., INC. V. UNITED STATES, 370 U. S. 294 (1962)

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Link to the Case Preview: <http://supreme.justia.com/us/370/294/>

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U.S. Supreme Court

Brown Shoe Co., Inc. v. United States, 370 U.S. 294 (1962)

Brown Shoe Co., Inc. v. United States

No. 4

Argued December 6, 1961

Decided June 25, 1962

370 U.S. 294

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF MISSOURI

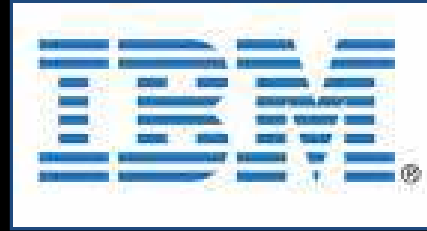
Syllabus

The Government brought suit to enjoin consummation of a merger of two corporations on the ground that its effect might be substantially to lessen competition or to tend to create violation of § 7 of the Clayton Act, as amended in 1950. The District Court found that the merger would increase concentration in the shoe industry, both in manufacturing and retail in the retail field, and establish a manufacturer-retailer relationship which would deprive all but the top firms in the industry of a fair opportunity to compete, and that, therefore, it pr

It is axiomatic that
the antitrust laws
were passed for
'the protection of
*competition, not
competitors,*'



VS.



- 1937- Consent Decree about punch card monopoly
- January 1969- Antitrust lawsuit filed
- July 1969- Consent Decree about bundling
- 1981 - Dismissed

3rd Big Bang>> 1981 IBM's Personal Computer



Before IBM PC

Two Major Operating Systems

1. Apple Computer
2. CP/M Operating System owned by Digital Research

Microsoft v. CPM

```
Current date is Tue 1-01-1980
Enter new date:
Current time is 7:48:27.13
Enter new time:

The IBM Personal Computer DOS
Version 1.10 (C)Copyright IBM Corp 1981, 1982

A>dir/w
COMMAND  COM      FORMAT  COM      CHKDSK  COM      SYS      COM      DISKCOPY  COM
DISKCOMP  COM      COMP    COM      EXEZBIN  EXE      MODE     COM      EDLIN     COM
DEBUG    COM      LINK    EXE      BASIC    COM      BASICA   COM      ART       BAS
SAMPLES  BAS      MORTGAGE  BAS     COLORBAR  BAS     CALENDAR  BAS     MUSIC     BAS
DONKEY   BAS      CIRCLE  BAS     PIECHART  BAS     SPACE     BAS     BALL      BAS
COMM     BAS

      26 File(s)
A>dir command.com
COMMAND  COM      4959    5-07-82  12:00p
      1 File(s)
A>
```



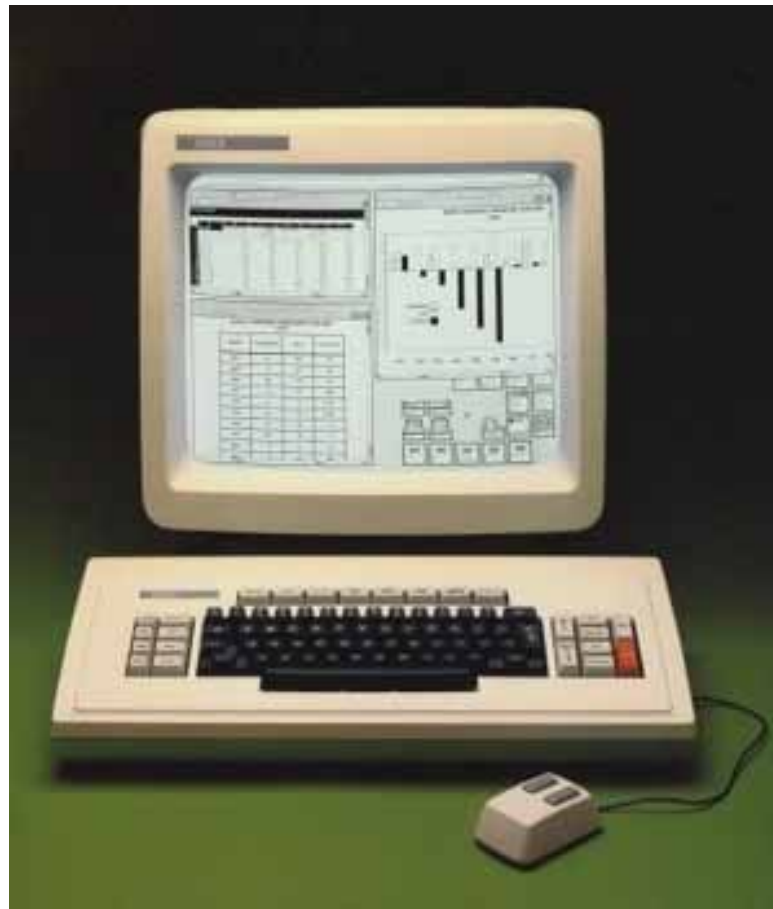
IBM Plan for the PC



- Intel microprocessors
- Control PC market by limiting OS to only IBM built machines using PC-DOS (Disk Operating System)
- IBM lost control of the Basis Input/Output System (BIOS)
- Clone market developed – Compaq, HP, etc
- Microsoft OS ran on Clones in competition with IBM using a version then call MS-DOS



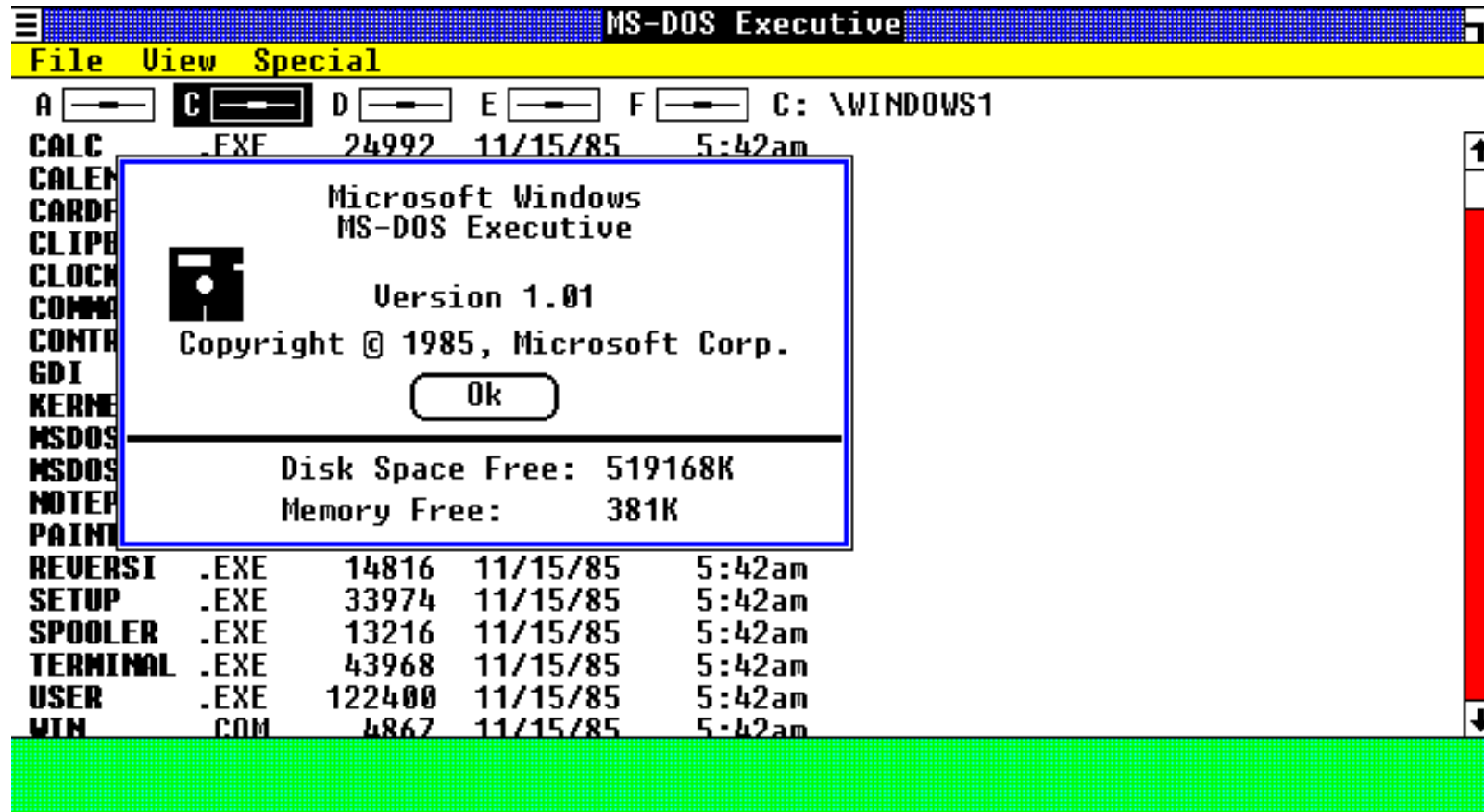
Xerox Star



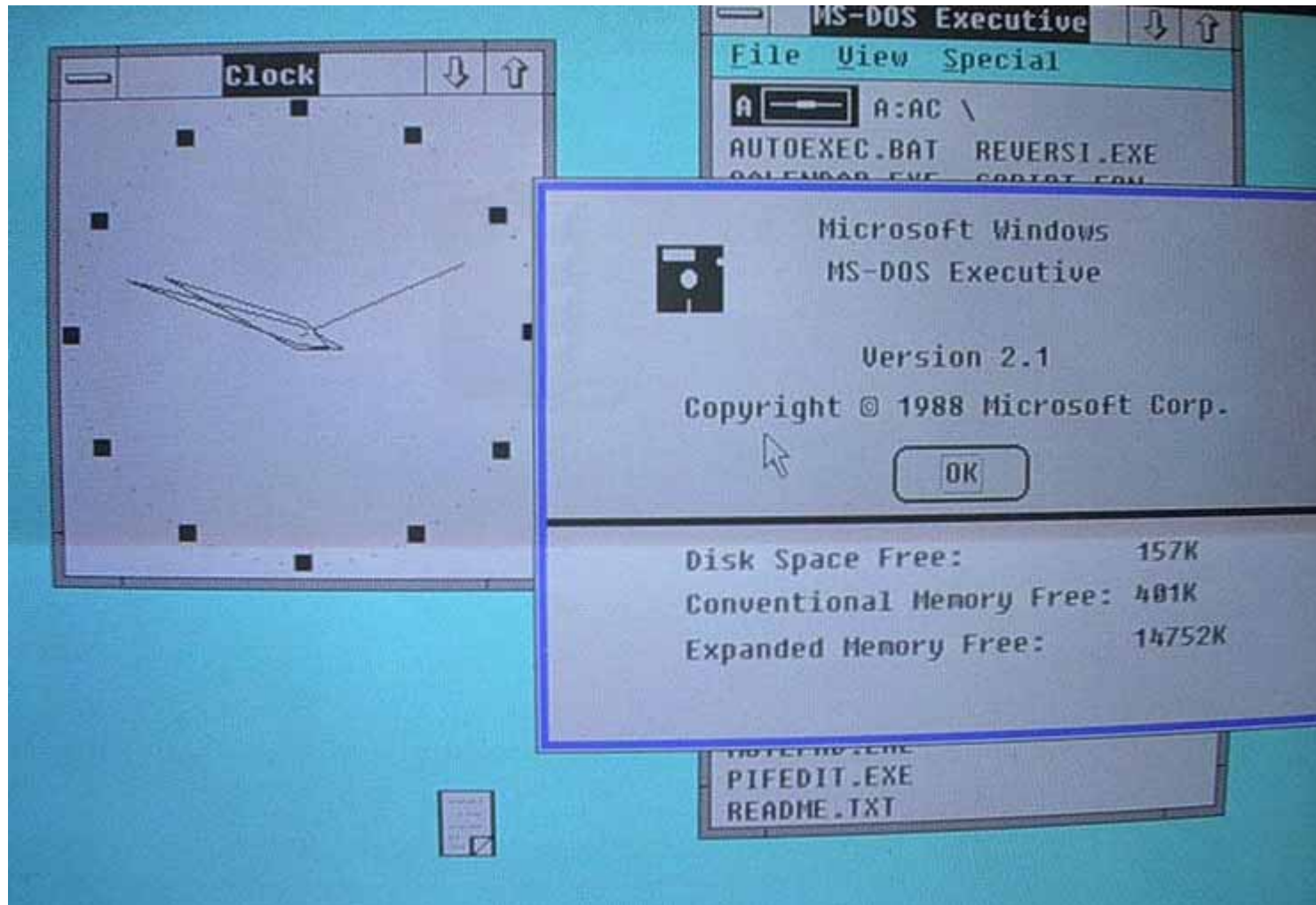
Apple Lisa



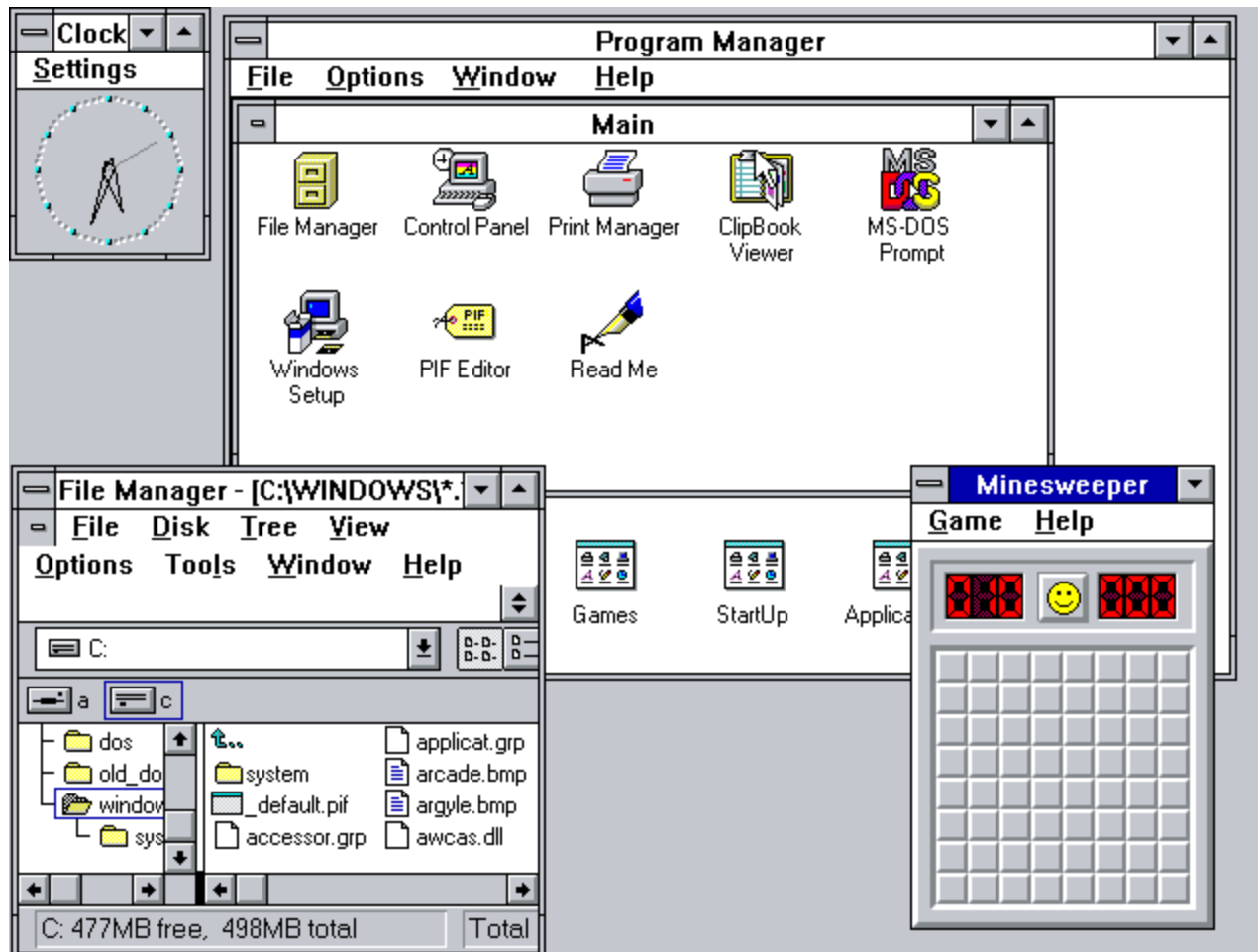
Windows 1.0



Windows 2.1



Windows 3.1





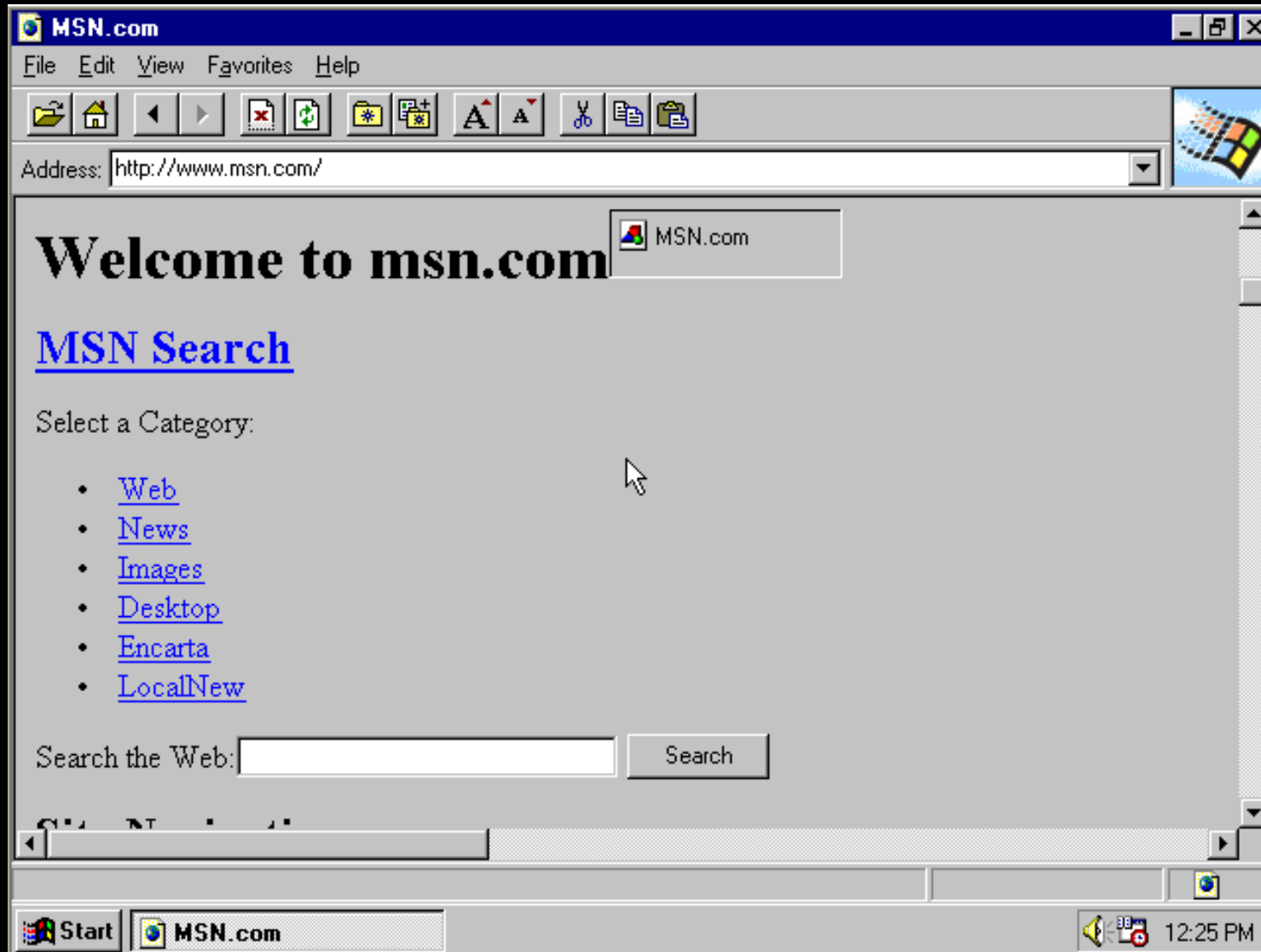
"Do you realize we've been together through three versions of Windows?"



Evolution of Windows

- Xerox Research Labs created GUI (Graphic User Interface) with mouse sold “Star”
- Xerox licensed Apple the GUI
- 1985 Apple licensed Microsoft GUI for Windows 1.0
- Apple sued Microsoft for Windows 2.1 for copyright infringement, and later Windows 3.0
- 1994 - 9th Circuit held that GUI cannot be copyrighted

4th Big Bang>>> 1995 Microsoft's Browser



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EU Antitrust Activities Aimed at Microsoft and IBM

Posted on March 23, 2009 by Peter Vogel

Google (Chrome browser) and Mozilla (Firefox browser) joined forces in the EU to complain about Microsoft's marketing of Internet Explorer (IE) originally brought by Norwegian browser company Opera, and T3 filed an antitrust complaint in the EU against IBM for adversely impacting the mainframe market. Neither Microsoft nor IBM are strangers to antitrust actions in the US and EU, and these complaints are just chapters in very long novels. Both companies have had profound impacts on IT and the Internet, and Microsoft and IBM have an interesting history together which makes these EU complaints all the more interesting.

US v. IBM

From its origins with the 1890 Census Dr. Herman Holerith's 80 column punch card (what I call the 1st Big Bang of the Internet) led to a company called IBM which had a monopoly on punch cards until its consent decree in the 1930s. Then in January 1969 the [US Justice Department](#) brought an antitrust action against IBM for monopolizing the computer market. At the time IBM sold its hardware, software, training, and all services as a bundled product. That is, if someone wanted the mainframe software they also had to purchase hardware, training, and everything else from IBM. So in the July 1969 IBM signed another consent decree to unbundle which led to the development of hundreds of companies for supplying software (like University Computing and Computer Associates), hardware (disk drives, memory, and the like). The antitrust trial was heard by a judge in New York for many years before the claims were dismissed when President Reagan came to office in 1981. Interestingly enough one of the lawyers who represented IBM in the trial was [David Boies](#) who represented the US government in the antitrust trial against Microsoft in 1998.

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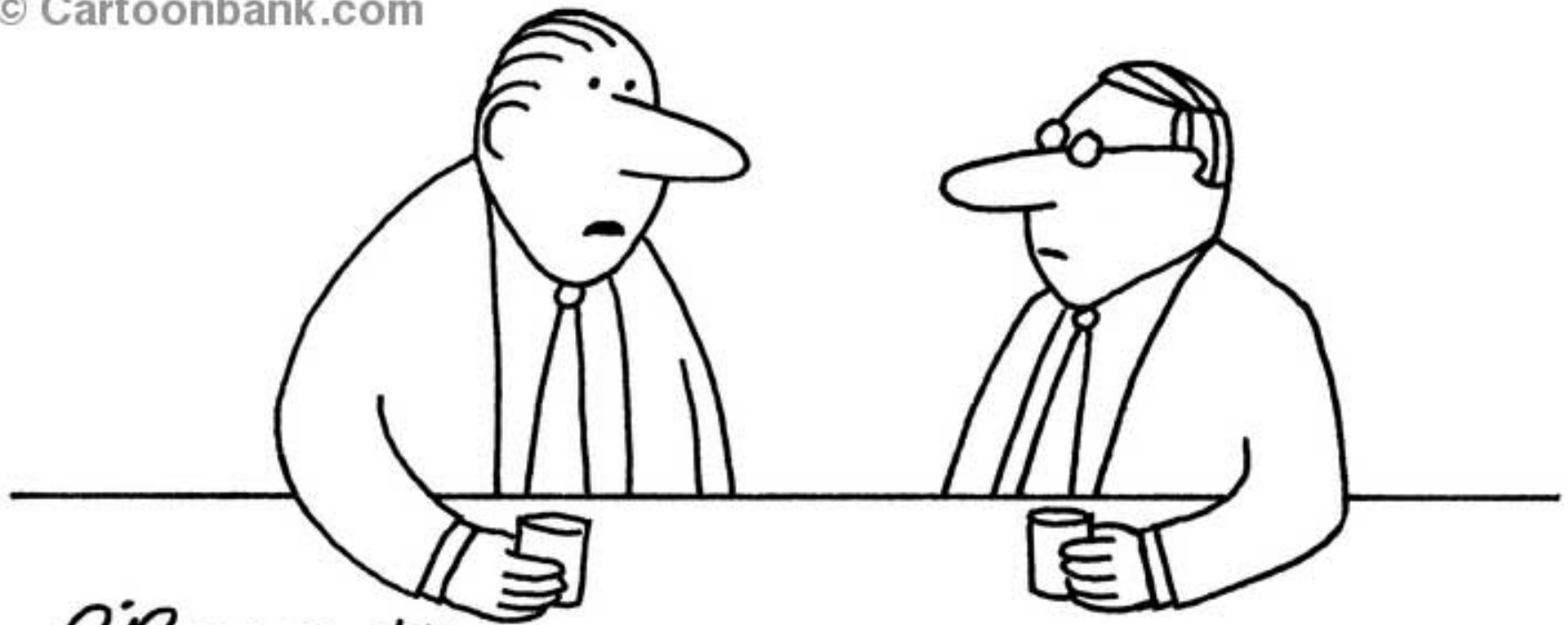
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July 4, 1997 Mars -Pathfinder





C. Borsotti

“I can’t explain it—it’s just a funny feeling that I’m being Googled.”

5th Big Bang>>> 2002 WEB 2.0

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President Obama: "America's economic prosperity in the 21st century will depend on cybersecurity"

Posted on June 1, 2009 by Peter Vogel

When President Obama spoke about cybersecurity last week the Whitehouse also released a 40 page "Cyberspace Policy Review" that included a thorough analysis concluding that the world's economy is dependence on the Internet. The Cyberspace Policy Review reinforced my [Five Big Bang Theory of the Internet](#) and is detailed in an Appendix (see chart below) which includes a reminder to the US about the October 1957 launch of Sputnik got the US started on its space race. Sputnik led President Kennedy to his 1961 promise to put a person 'on the moon by the end of the decade.' President Kennedy's promise directly led to funding of DARPA in 1962 that started to the Internet.

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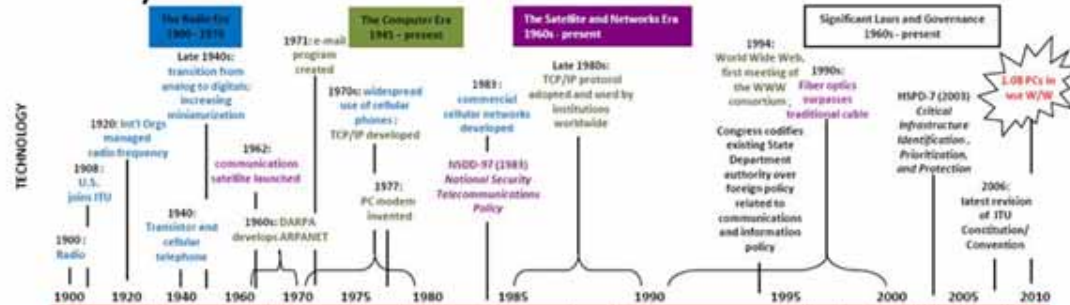
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Peter Vogel

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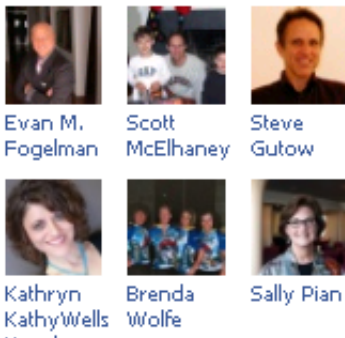
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Information

Relationship Status: Married to Marguerite Burtis
Current City: Dallas, TX

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227 friends See All



Michele Wong Krause

In this photo: Peter Vogel



Michele's Reception

February 13 at 12:44pm View album



Sadye Sarah Vogel Congrats, Grandpa!

February 10 at 10:43am Comment Like See Wall-to-Wall



Peter Vogel Sadye...gee thanks...beautiful grandson, thanks to John-Paul and Alesha. Best to you and your beautiful baby as well. Peter

February 10 at 6:04pm Delete



Sadye Sarah Vogel Mason is going to be 5 months old on Monday...it really does go so fast! I can't wait till the little boys can meet!

Create an Ad

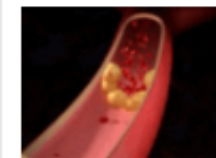
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Play the first Big Screen Facebook Game for free! 5 minutes to master and extremely fun! Click and Play Now!

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No diet required. Drop your cholesterol with this two minute snack. Even the strongest statin drugs can't do much better.

Like

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Statistics

Company Figures More than 400 million active users
50% of our active users log on to Facebook in any given day
More than 35 million users update their status each day
More than 60 million status updates posted each day
More than 3 billion photos uploaded to the site each month
More than 5 billion pieces of content (web links, news stories, blog posts, notes, photo albums, etc.) shared each week
More than 3.5 million events created each month
More than 3 million active Pages on Facebook
More than 1.5 million local businesses have active Pages on Facebook
More than 20 million people become fans of Pages each day
Pages have created more than 5.3 billion fans

Average User Figures Average user has 130 friends on the site
Average user sends 8 friend requests per month
Average user spends more than 55 minutes per day on Facebook
Average user clicks the Like button on 9 pieces of content each month
Average user writes 25 comments on Facebook content each month
Average user becomes a fan of 4 Pages each month
Average user is invited to 3 events per month
Average user is a member of 13 groups

International Growth More than 70 translations available on the site
About 70% of Facebook users are outside the United States
Over 300,000 users helped translate the site through the translations application

Platform More than one million developers and entrepreneurs from more than 180 countries
Every month, more than 70% of Facebook users engage with Platform applications
More than 500,000 active applications currently on Facebook Platform

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Partner, Gardere Wynne Sewell LLP
Dallas/Fort Worth Area | Law Practice



Peter Vogel Oops: GSA official overstates cloud savings <http://www.vogelitlawblog.com/>
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- **Partner** at **Gardere Wynne Sewell LLP**
- **Special Master/Mediator - Internet, IT & eDiscovery Litigation** at **Federal & State Courts**
- **Adjunct Professor of Law at Dedman School of Law** at **Southern Methodist University**

[see all...](#)

Past

- Founding Chair, Judicial Committee on Information Technology at Supreme Court of Texas
- Lawyer at Peter S. Vogel, P.C.
- Systems Programmer at National Institutes of Health

[see all...](#)

Education

- St. Mary's University School of Law
- American University
- The University of Texas at Austin - The Red McCombs School of Business

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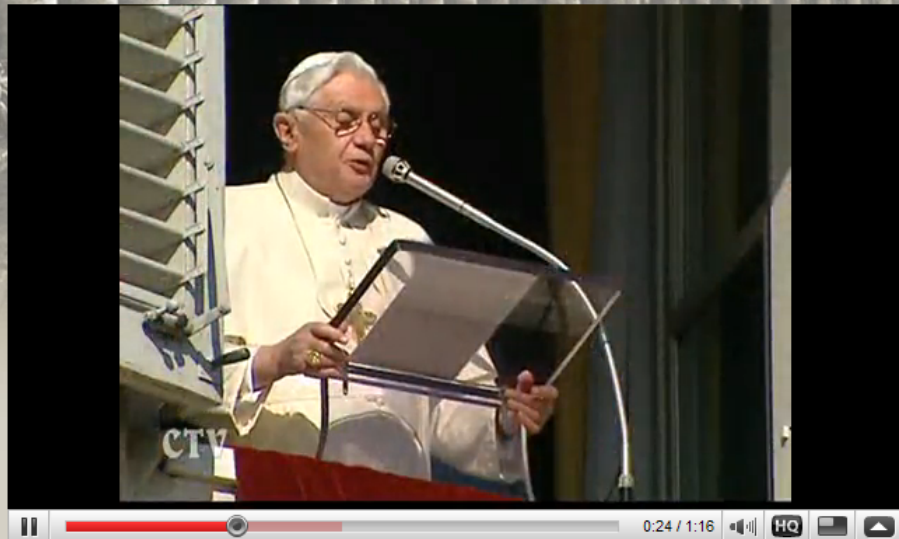
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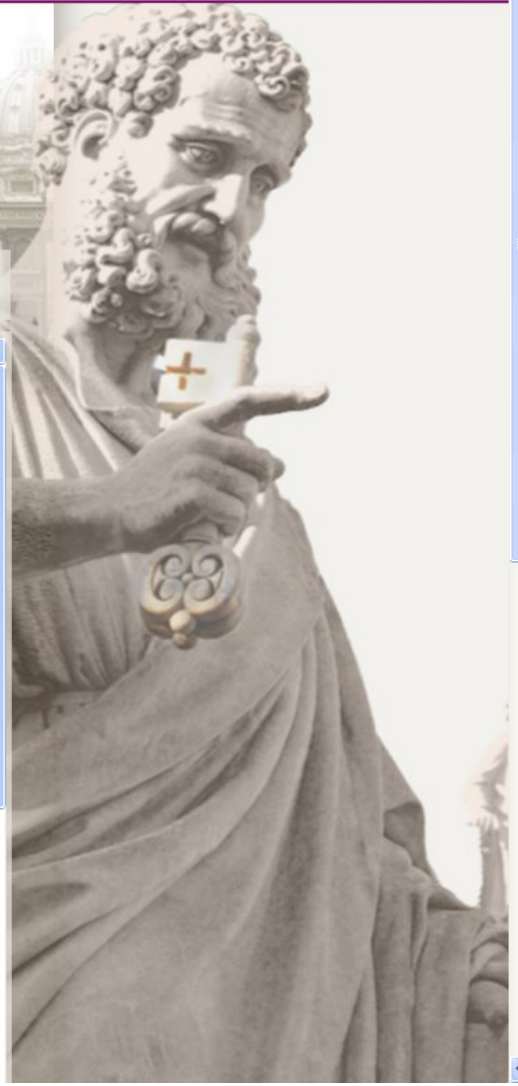
Pope Benedict XVI reflected on the Feast of All Saints this Sunday in remarks ahead of the Angelus prayer with the faithful gathered in St. Peters Square.

In our lives, said Pope Benedict, We are never alone: we are part of spiritual company governed by a solidarity.!!(more:info)

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Web 2.0 Update - 430 Members of Congress on YouTube

Posted on December 27, 2009 by Peter Vogel

Web 2.0 must be for real, how else can anyone explain Members of Congress find YouTube, Twitter, Blogs, and Facebook the most effective way to communicate in 2009? Today NPR (National Public Radio) interviewed Republican strategist Mindy Finn (a partner and blogger at the political consulting firm Engage who helped Virginia Gov.-elect Bob McDonnell) said that "Members who don't have a lot of say or don't have much of a voice in Congress can use social media to talk directly to their constituents, to voters and to activists." Finn went on to say "In the past, they might put out a press release and nobody picks it up. But now if they build up a network of blogger support, if they have a presence on Facebook or on Twitter, and they put out that same information, it can go virally across the Internet."

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YouTube Offering Text Captioning

Google recently announced that it is making YouTube [accessible to deaf and hearing impaired](#) Internet users. Since the captions are English-language speech only the power of Google's 51 languages will allow for automatic translation to millions of people around the world who do not speak English. This technology is not new and Google currently uses it to transcribe voice mail messages into .wav files with Google Voice. Of course this technology is not perfect but offers a dramatic impact on world-wide communications.

Federal Trade Commission Examining Google Acquisition of AdMob

What will happen if AdMob, one of the top sellers of iPhone banner ad apps and web pages, becomes part of [Google's empire](#)? This acquisition would position Google to be a major player in the mobile advertising ecosystem and expand Google's market power. It does not take rocket science to see that Members of Congress are taking

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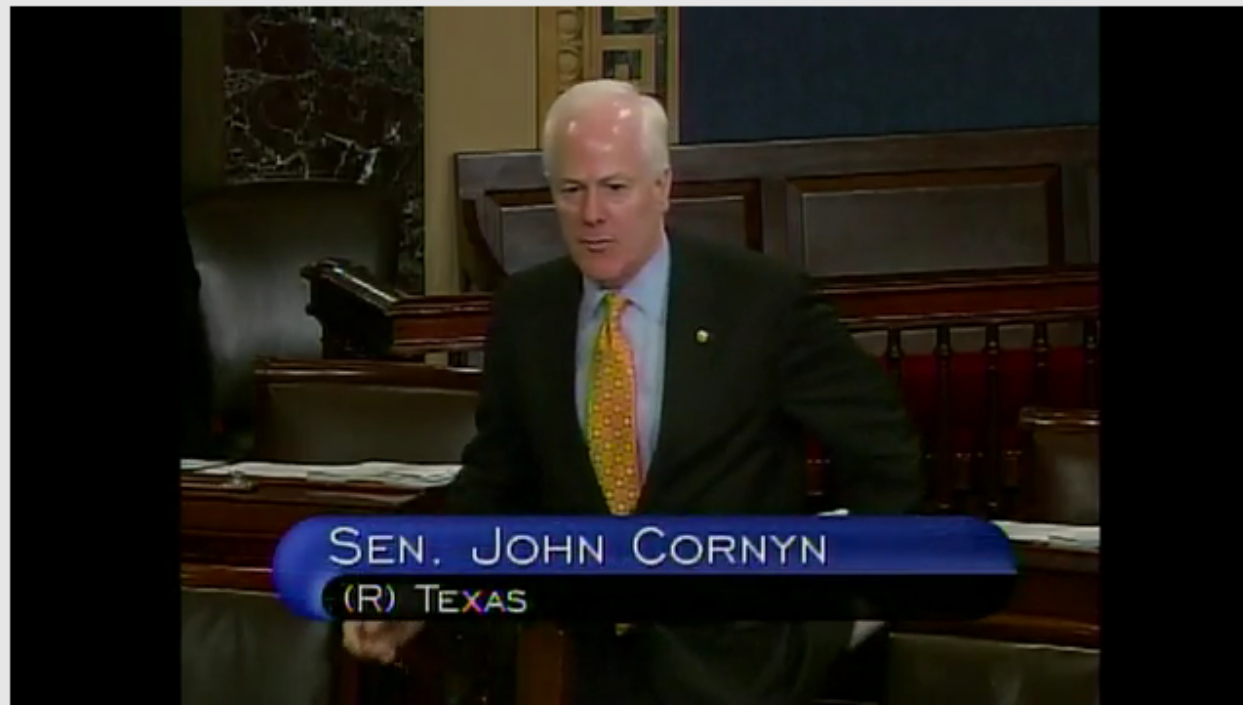


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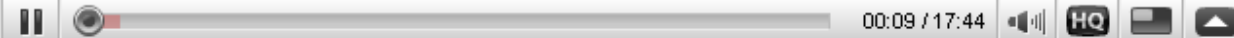
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Web 2.0 Democracy- Vote on Facebook Governance before April 24, 2009

Posted on April 19, 2009 by Peter Vogel

From April 16 through 23, 2009 the 200 million Facebook users have a chance to vote on their own governance, but the new governance will only be adopted if 30% of the Facebooks friends vote. This vote follows a virtual town hall meeting that allowed comments on the proposed governance terms. It seems to make sense that the users should have some control over their own social networking activities.

Friends Complain

Hundreds of thousands Facebook friends sent emails complaining about a new privacy policy in September 2006, and as a result Facebook decided not to adopt the new privacy policy. Earlier this year Facebook decided to retain all items posted forever, and another ground swell of opposition stopped these changes. These messages indicate a sense of ownership that Facebook users have about Facebook, which led Facebook to promise to be more transparent, and as a result the right to vote on governance.

All Facebook Users Should Review the Proposed Governance

Since few individuals ever bother to read terms of use, privacy policies, or click agreements, this is a novel opportunity for Web 2.0 to encourage the users to establish policies. This may have an impact on future policies for the Internet, so stay tuned for the election results.

 TAGS: [Facebook](#), [Web 2.0](#), [eCommerce](#)

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.00332827% of Facebook Friends Cast Governance Votes

Posted on April 25, 2009 by Peter Vogel

Ted Ulyot, Facebook's General Counsel, reported the [governance vote results](#) that 74.37% of the 665,654 cast ballots in support of the new Statement of Rights and Responsibilities and Principles (Statement). The new Statement was adopted with less than 1% even of Facebook friends casting ballots. It's refreshing that there was a democratic vote on the largest social network in the world, but amazing that so few voted.

Statement Requires 30% to Vote

Well that was the plan, but with such a small turn out Facebook decided that the 30% cannot even be the threshold. Facebook will go back to the drawing board to determine what percentage should be the minimum, and it will be a low percentage.

Democracy Web 2.0 Style

The reason for the [governance vote](#) to begin with was that Facebook was changing policies only to get Facebook friends vocal pushback. Facebook provided democracy by allowing the New Statement to be vetted in virtual town hall forums and a vote of the friends. As the Internet evolves in the future perhaps we can look back at this governance vote as a sea change that social network users should have a say in the governance. However, since so few individuals ever read terms of service or privacy policies this may also be the only vote ever conducted on social

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Antitrust Update - Challenges for Intel, Oracle, and Microsoft

Posted on November 6, 2009 by Peter Vogel

With a barrage of antitrust headlines it hard to know which one has the greatest impact on the Internet and IT community. But clearly [New York's antitrust filing against Intel](#) in Delaware is near the top of the list. Why Delaware? Apparently NY is using the on-going [Advanced Micro Devices \(AMD\) antitrust suit against Intel](#) as a form of piling on, not to mention that AMD is building a new \$4.2 billion plant in NY. NY's antitrust claims are a lot like the [EU antitrust findings](#) that Intel's business practice of paying computer manufacturers rebates and incentives for using Intel chips rather than those of AMD (or anyone else).

Oracle's Plan to Acquire Sun Hit an EU Roadblock

Apparently the EU is not pleased that [Oracle](#), the database market leader, intends to acquire [Sun](#) which owns the open source database product MySQL without selling off MySQL. The EU is concerned about Oracle's competitors [Microsoft](#) and [IBM](#) even though Oracle is the dominant database company. But some think that Oracle's acquisition of Sun and My SQL will be transformational to the IT industry by providing a different market against Microsoft.

Challenge to EU Browser Settlement

[Google](#), [Mozilla](#), and [Opera](#) are still concerned about the Microsoft settlement even though the EU approved [Microsoft's plan](#) to allow customers a choice of browsers, not automatically only provide Microsoft's Internet Explorer. [Net Applications](#) recent market share reports indicates that "Internet Explorer has a 67 percent share of the global browser market,... Firefox has 24 percent, Apple's Safari, 4.4 percent, Google's Chrome, 3.5 percent, and Opera, 2 percent." On the surface it seems that Microsoft's competitors should be able to increase their EU market share based on the settlement, but stay tuned to see how the EU reacts to these new complaints.

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Peter S. Vogel is a partner at Gardere Wynne Sewell LLP, where he is Chair of the Electronic Discovery [MORE...](#)

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Teaching computers to read: Google acquires reCAPTCHA

9/16/2009 09:20:00 AM



The image above is a [CAPTCHA](#) — you can read it, but computers have a harder time interpreting the letters. We tried to make it hard for computers to recognize because we wanted to give humans the scoop first, but we're happy to announce to everybody now that Google has acquired [reCAPTCHA](#), a company that provides CAPTCHAs to help protect more than 100,000 websites from spam and fraud.

Since computers have trouble reading squiggly words like these, CAPTCHAs are designed to allow humans in but prevent malicious programs from scalping tickets or obtain millions of email accounts for spamming. But there's a twist — the words in many of the CAPTCHAs provided by reCAPTCHA come from scanned archival newspapers and old books. Computers find it hard to recognize these words because the ink and paper have degraded over time, but by typing them in as a CAPTCHA, [crowds teach computers](#) to read the scanned text.

In this way, reCAPTCHA's unique technology improves the process that converts scanned images into plain text, known as Optical Character Recognition (OCR). This technology also powers large scale text scanning projects like [Google Books](#) and [Google News Archive Search](#). Having the text version of documents is important because plain text can be searched, easily rendered on mobile devices and displayed to visually impaired users. So we'll be applying the technology within Google not only to increase fraud and spam protection for Google products but also to improve our books and newspaper scanning process.

That's why we're excited to welcome the reCAPTCHA team to Google, and we're committed to delivering the same high level of performance that websites using reCAPTCHA have come to expect. Improving the availability and accessibility of all the information on the Internet is really

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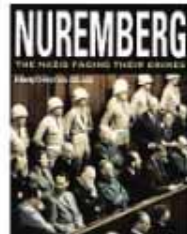
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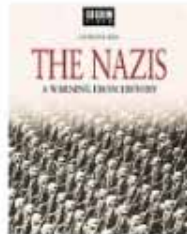
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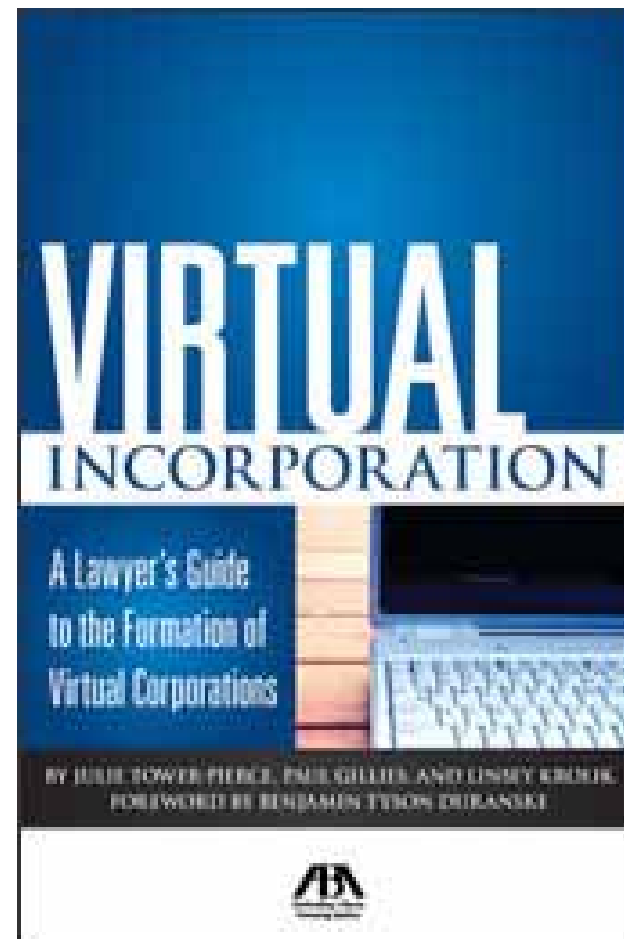
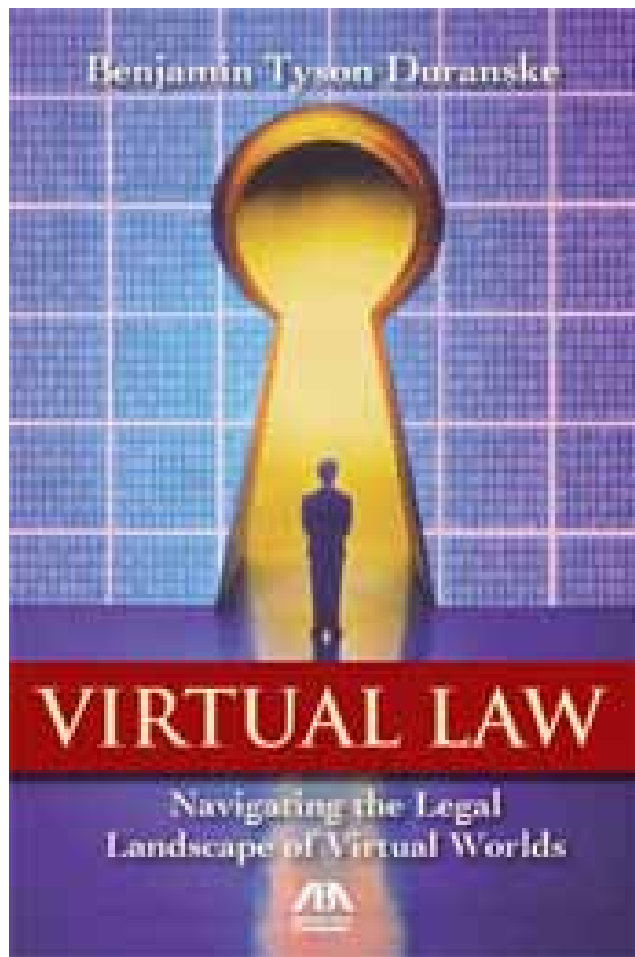
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Secondlife.com

The image shows the homepage of Second Life. At the top, there is a navigation bar with a language selector, a 'Launch Second Life' button, and 'Login' and 'Search' options. Below this is a main navigation menu with links for 'What Is Second Life?', 'World Map', 'Shopping', 'Buy Land', 'Community', and 'Help'. A prominent orange 'Join Now >>' button is located in the top right corner, with the text 'It's fast, free and easy!' underneath it. The main content area is split into two parts: on the left, a dark background with the text 'Join the Internet's largest user-created, 3D virtual world community.' and 'Membership is free!' followed by another 'Join Now >>' button; on the right, a large 3D rendering of a female avatar with brown hair, wearing a purple top and brown pants, standing in a virtual landscape with buildings and water. The footer contains copyright information for Linden Research, Inc., and links to 'Affiliate Program', 'Policies & Guidelines', 'Second Life Work', 'Second Life Develop', and 'Download Second Life'.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARC BRAGG, : CIVIL ACTION
: NO. 06-4925
:
Plaintiff, :
:
v. :
:
LINDEN RESEARCH, INC. and :
PHILIP ROSEDALE, :
:
Defendants. :

M E M O R A N D U M

EDUARDO C. ROBRENO, J.

May 30, 2007

This case is about virtual property maintained on a virtual world on the Internet. Plaintiff, March Bragg, Esq., claims an ownership interest in such virtual property. Bragg contends that Defendants, the operators of the virtual world, unlawfully confiscated his virtual property and denied him access to their virtual world. Ultimately at issue in this case are the novel questions of what rights and obligations grow out of the relationship between the owner and creator of a virtual world and its resident-customers. While the property and the world where it is found are "virtual," the dispute is real.



"You know, you can do this just as easily online."

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Is the US Cybersafe? Probably Not!

Posted on May 4, 2009 by Peter Vogel

After a three-year study a panel (of former military leaders and IT professionals) from the National Academy of Sciences reported that the US has no clear military policies for cyberattacks. Notwithstanding a recent blog about the NSA exceeding its authority to intercept email, we are not much safer from cyberattacks. One would have to live under a rock to have not noticed the significant number of system breaches. As a matter of fact as pointed out in other blogs, LexisNexis just warned 32,000 individuals about data breaches that personal information may have been improperly accessed in a credit card scheme as far back as 2004.





Proposed Federal Legislation to Update FISMA

The US Congress will be considering an update to FISMA (the Federal Information Security Management Act) called the "U.S. Information and Communications Enhancement Act of 2009." This proposed Act will create hacker squads to test defenses of agency networks, and the agencies will be required to show how they can effectively detect and respond to cyberattacks. Currently there are only about five federal agencies who conduct this type of testing.

Cyberattacks From Within

A former Sysadmin (System Administrator) recently pled guilty to a charge of cyber extortion by threatening his former employer and faces up to five years in prison and a fine of \$250,000. After the Sysadmin was terminated last year he complained about the severance and threatened to cause extensive damage to his former employer's systems. Apparently he left many back doors in the systems he managed that allowed him to enter and cause havoc, which of course as a Sysadmin he had the authority to do so.

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HEADLINE: FBI Director Warns of 'Rapidly Expanding' Cyberterrorism Threat

Posted on March 5, 2010 by Peter Vogel

The Robert S. Mueller III's (FBI Director) warning is not a surprise but how the IT community deals with these threats impact us all. Homeland Security Secretary Janet Napolitano "admitted there is an urgent need to step up efforts to protect Americans from cyber attacks." Also Ms. Napolitano's predecessor Michael Chertoff, former DHS secretary, under President George W Bush, agreed. "We are seeing in the intervening time the adversaries, whether they be criminals or nation states or terrorists, are not taking time off. So with each passing year, the need to move faster becomes greater." So far new the Cyber Czar as been low profile, but based on these presentations at the recent RSA Conference that low profile cannot continue.

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Cyber Crime: A Clear and Present Danger

Deloitte's recent white paper is the result of the 2010 CSO (Chief Security Officer) CyberSecurity Watch Survey in conjunction with the CSO Magazine, the US Secret Service, and the CERT Coordination Center at Carnegie Mellon. The white paper concludes that:

Data is more valuable than money. Once spent, money is gone, but data can be used and reused to produce more money. The ability to reuse data to access on-line banking applications, authorize and activate credit cards, or access organization networks has enable cyber criminals to create an extensive archive of data for ongoing illicit activities.

There is a clear message about how vulnerable businesses are and how every business must be vigilant or risk great damage.

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