



# CopyrightX Lecture 7: Rights of Reproduction and Modification

## Selected Illustrations

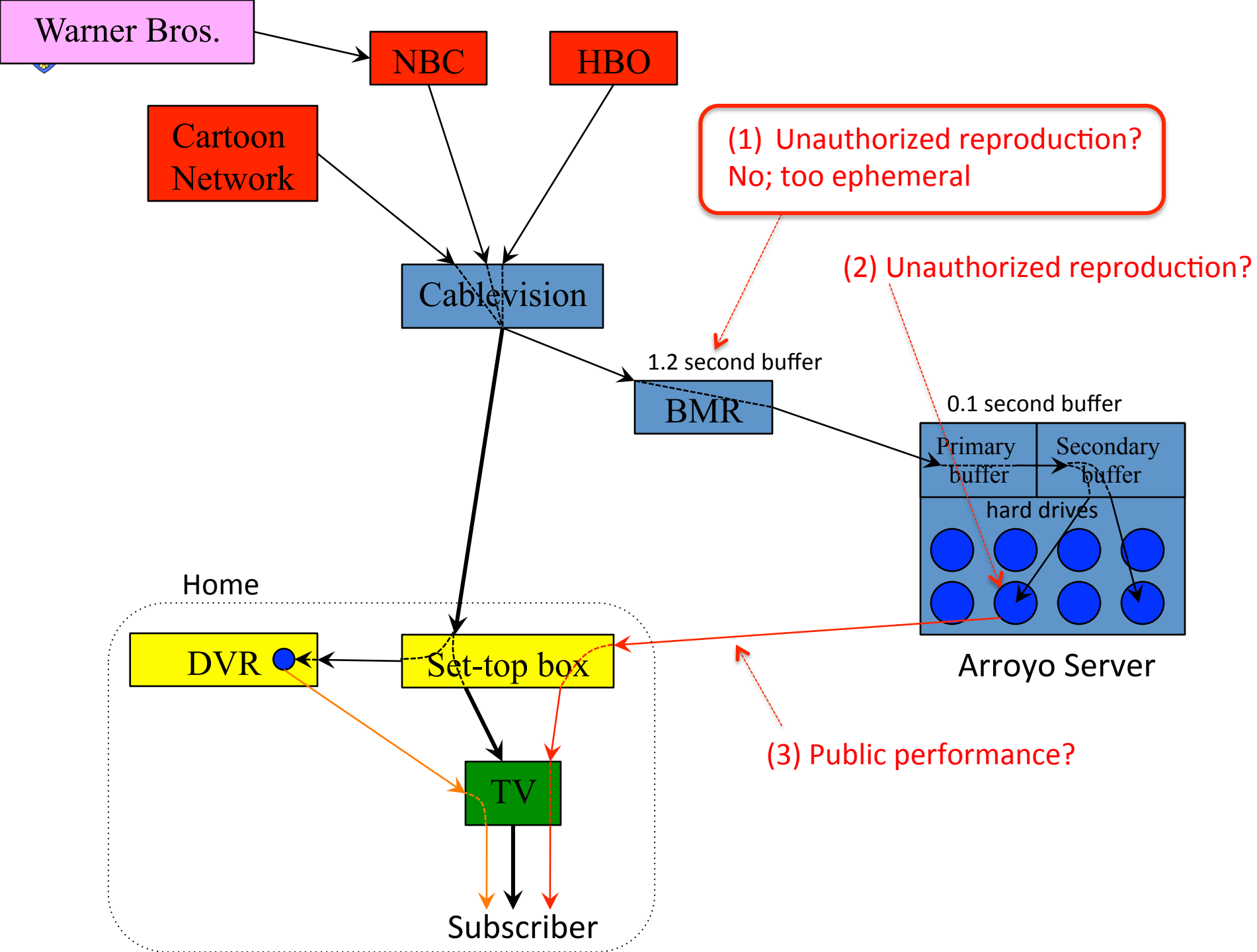
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February 19, 2013



The following images appear in the background of seventh lecture in the CopyrightX lecture series. A recording of the lecture itself is available at <http://copyx.org/lectures/>. Removed from their original context, the images will not make much sense. The function of this collection of images is to enable persons who have already watched the lecture to review the material it contains.

The terms on which these materials may be used or modified are available at <http://copyx.org/permission/>.





# Cablevision (CA2 2008)

“Copies,” as defined in the Copyright Act, “are material objects . . . in which a work is fixed by any method . . . and from which the work can be . . . reproduced.” *Id.* § 101. The Act also provides that a work is “‘fixed’ in a tangible medium of expression when its embodiment . . . is sufficiently permanent or stable to permit it to be . . . reproduced . . . *for a period of more than transitory duration.*” *Id.* (emphasis added). We believe that this language plainly imposes two distinct but related requirements: the work must be embodied in a medium, i.e., placed in a medium such that it can be perceived, reproduced, etc., from that medium (the “embodiment requirement”), and it must remain thus embodied “for a period of more than transitory duration” (the “duration requirement”). Unless both requirements are met, the work is not “fixed” in the buffer, and, as a result, the buffer data is not a “copy” of the original work whose data is buffered.



# Copying Nonliteral Features of Programs

- Whelan (CA3 1986)
- Plains Cotton (CA5 1987)
- \*Altai (CA2 1992)
- Kepner-Tregoe (CA5 1994)
- Softel (1997)



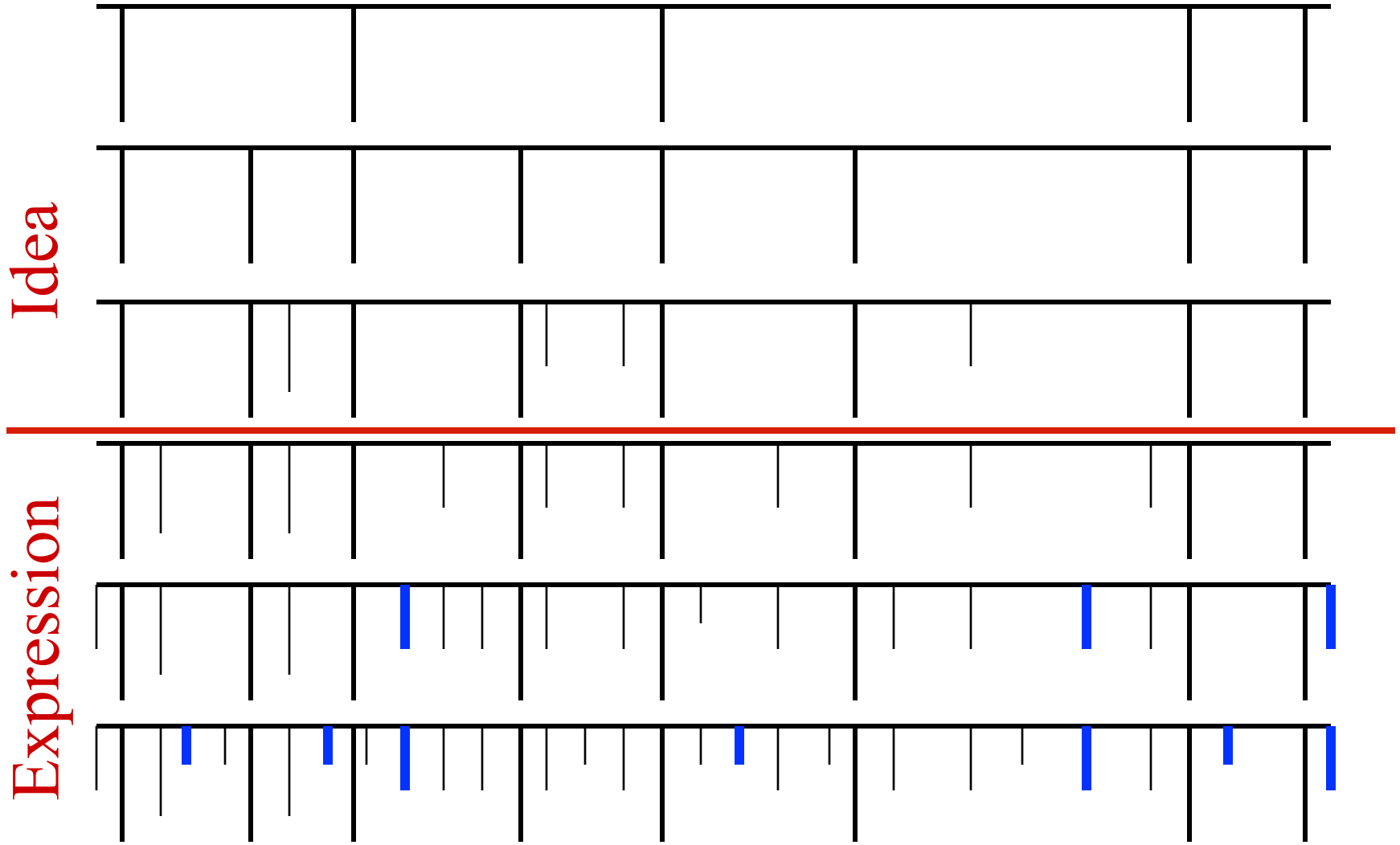
# *Nichols* “Pattern” Test

“Upon any work, and especially upon a play, a great number of patterns of increasing generality will fit equally well, as more and more of the incident is left out. The last may perhaps be no more than the most general statement of what the play is about, and at times might consist only of its title; but there is a point in this series of abstractions where they are no longer protected, since otherwise the playwright could prevent the use of his "ideas," to which, apart from their expression, his property is never extended. Nobody has ever been able to fix that boundary, and nobody ever can. In some cases the question has been treated as though it were analogous to lifting a portion out of the copyrighted work; but the analogy is not a good one, because, though the skeleton is a part of the body, it pervades and supports the whole. In such cases we are rather concerned with the line between expression and what is expressed.”





# *Nichols* “Pattern” Test

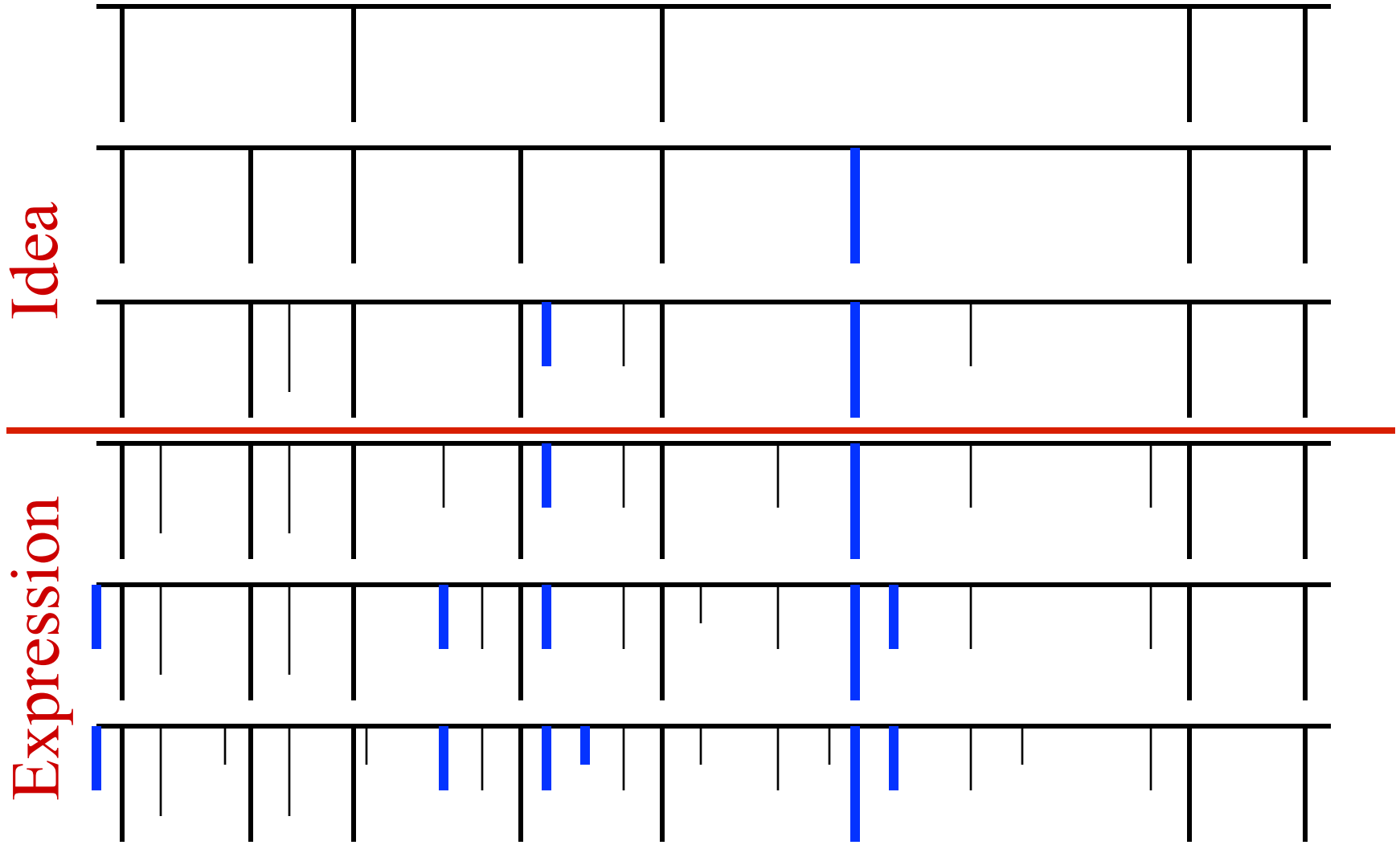


Elements dictated by efficiency





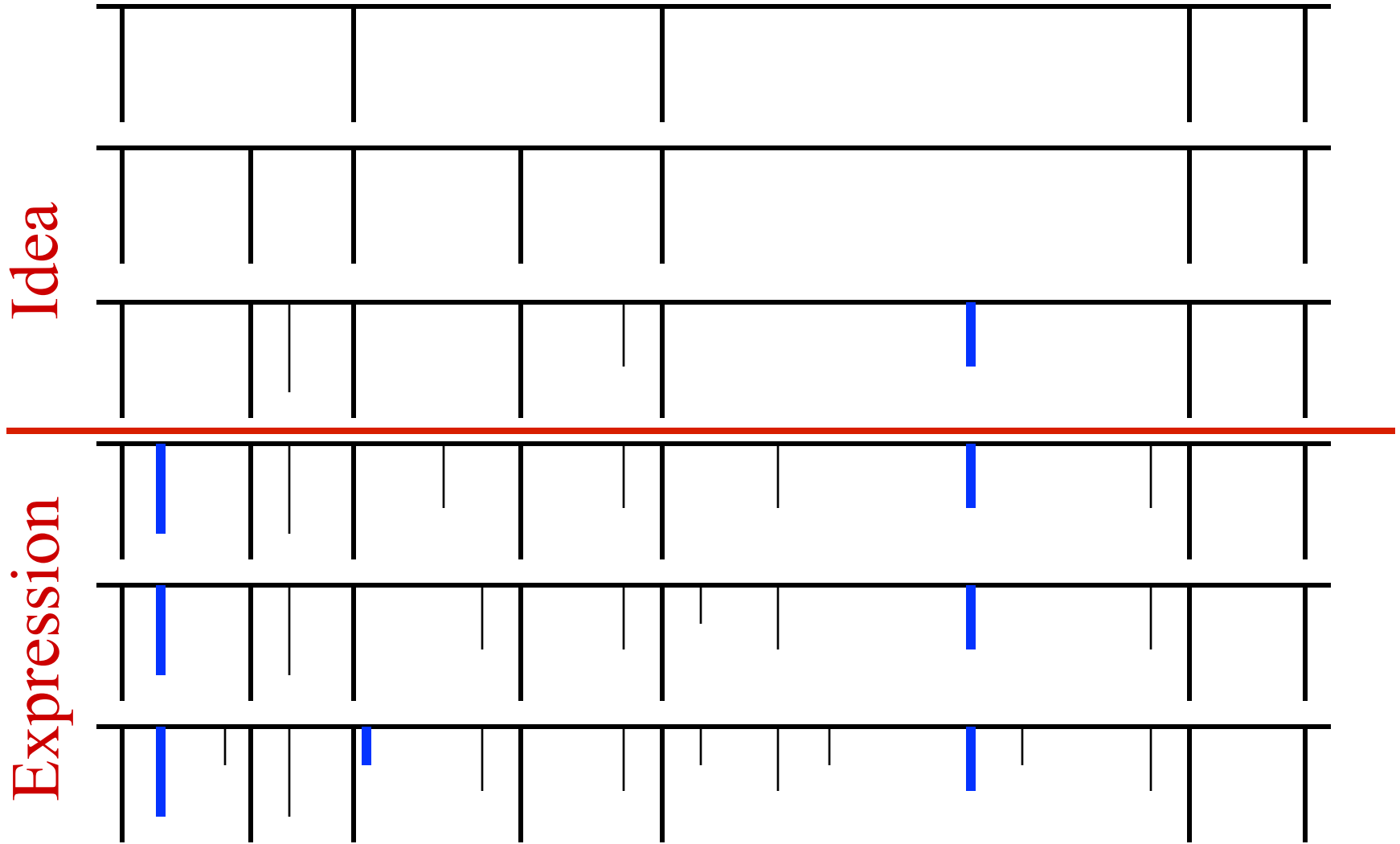
# *Nichols* “Pattern” Test



Elements dictated by external factors



# Nichols “Pattern” Test

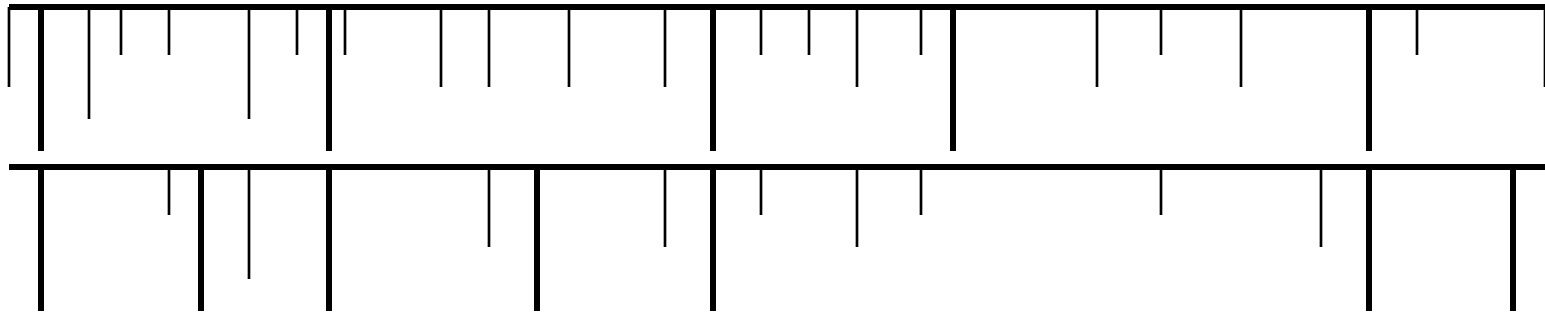


Elements taken from public domain

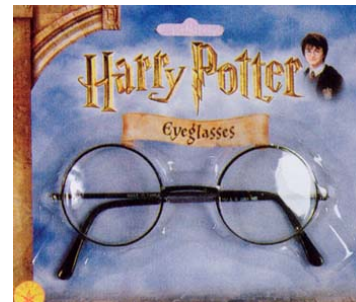
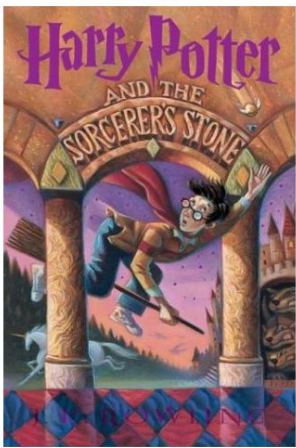


# Comparison

Elements of defendant's program



Protected Parts of Plaintiff's program



March 5, 2015