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Who Cares What Jefferson Thought About Copyright?

posted October 17, 2011 by Terry Hart.

A letter written by Thomas Jefferson to Isaac McPherson in 1813 has become canonized into the copyright skepticism movement. You're probably familiar with the letter, which reads in part:

If nature has made any one thing less susceptible than all others of exclusive property, it is the action of the thinking power called an idea, which an individual may exclusively possess as long as he keeps it to himself; but the moment it is divulged, it forces itself into the possession of every one, and the receiver cannot dispossess himself of it. Its peculiar character, too, is that no one possesses the less, because every other possesses the whole of it. He who receives an idea from me, receives instruction himself without lessening mine; as he who lights his taper at mine, receives light without darkening me.

It's easy to see why this particular letter is valued so much by copyright's critics — it <u>expresses sentiments they</u> agree with and it is written by a <u>Founding Father</u>, giving it the weight of authority. One gets the sense from reading those that quote this letter that it presents a sort of idealized version of copyright, one that current copyright law has long since forgotten. ²

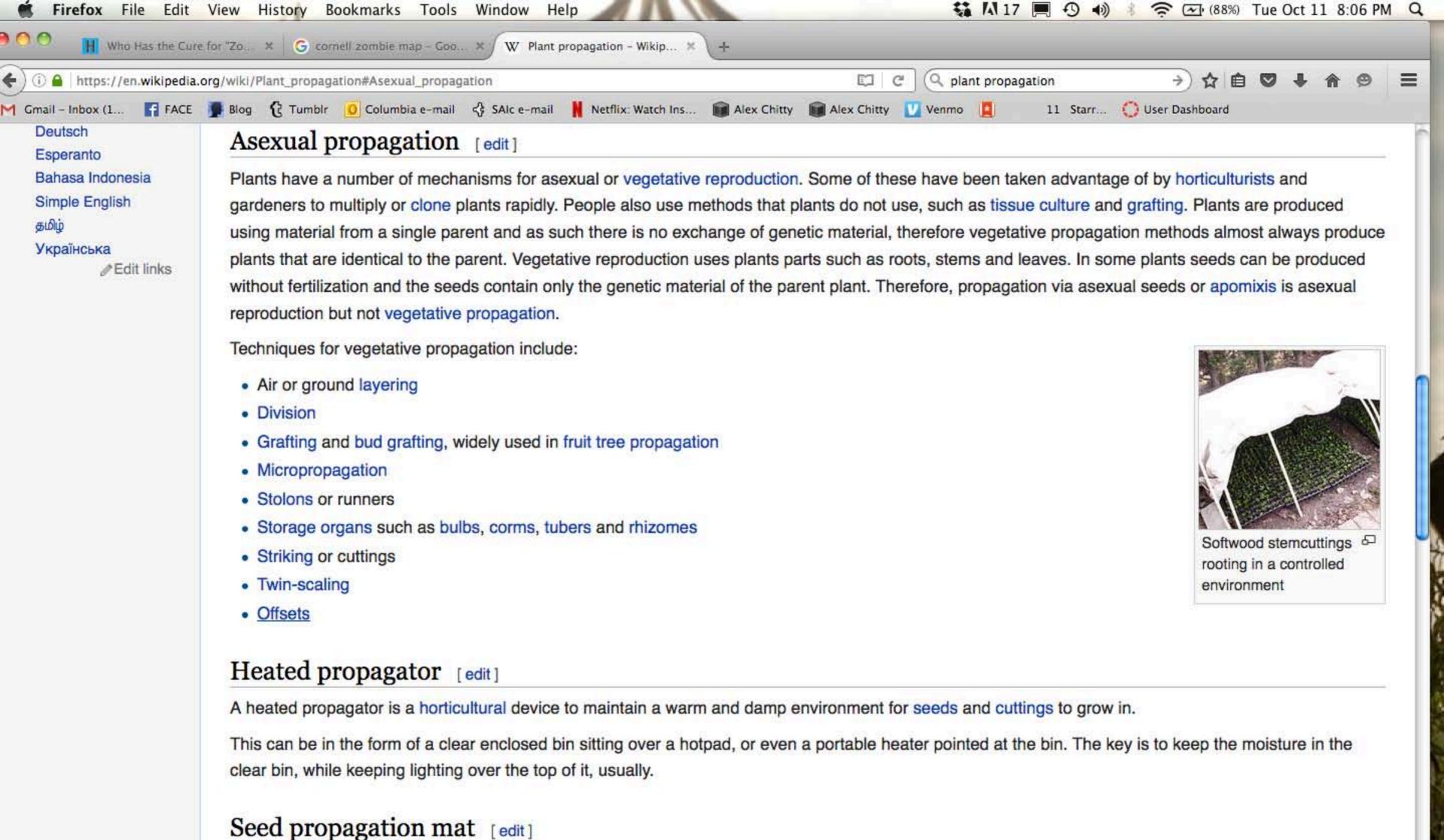
Despite the sacrosanct nature that this letter has been given, there are some serious problems with it being considered a foundational document in copyright law.

He was talking about something else

For starters, Jefferson was expressly talking about patents, not copyright. It's odd that the letter is used at all when discussing copyright because of this fact, but it is. 3 Though the two share similarities — for example, Congress's power to make laws concerning both stems from the same Constitutional clause, and Congressional practice concerning one can inform the other 4 — the differences between them are more relevant here.

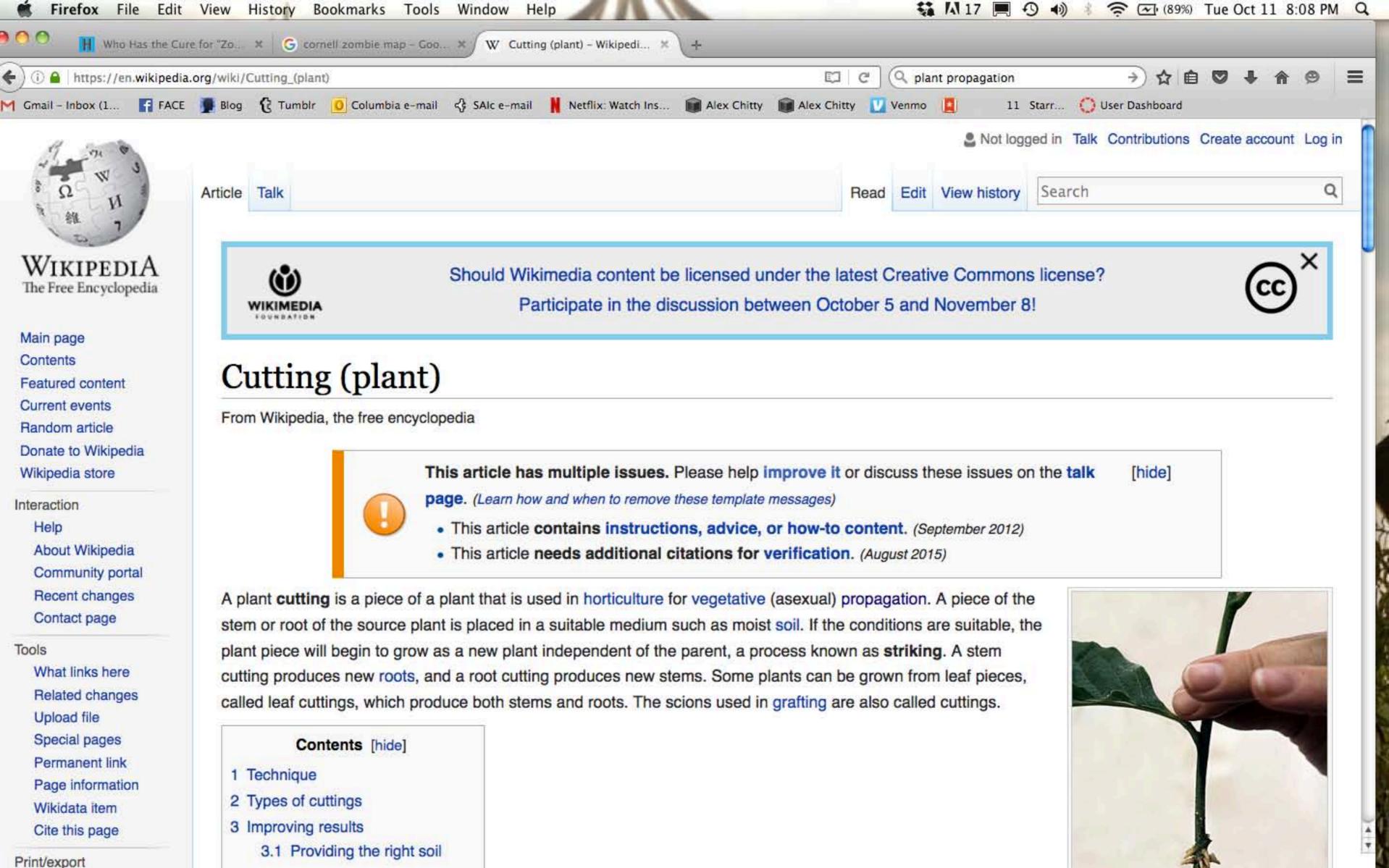
On the one hand, it can be said that a patent protects *ideas* embodied in a new invention or process. Though a patent can't protect an abstract idea by itself, nor take a known idea out of the public domain, ⁵ it does foreclose the use of the ideas described in the invention's claims. ⁶ This tension between patent protection and the free flow of ideas is inherent in patent law. Jefferson's description of the nature of ideas in the letter reflects his concerns over this tension, especially in light of the argument that inventors have a natural right to their inventions that Jefferson refers to at the beginning of the letter.

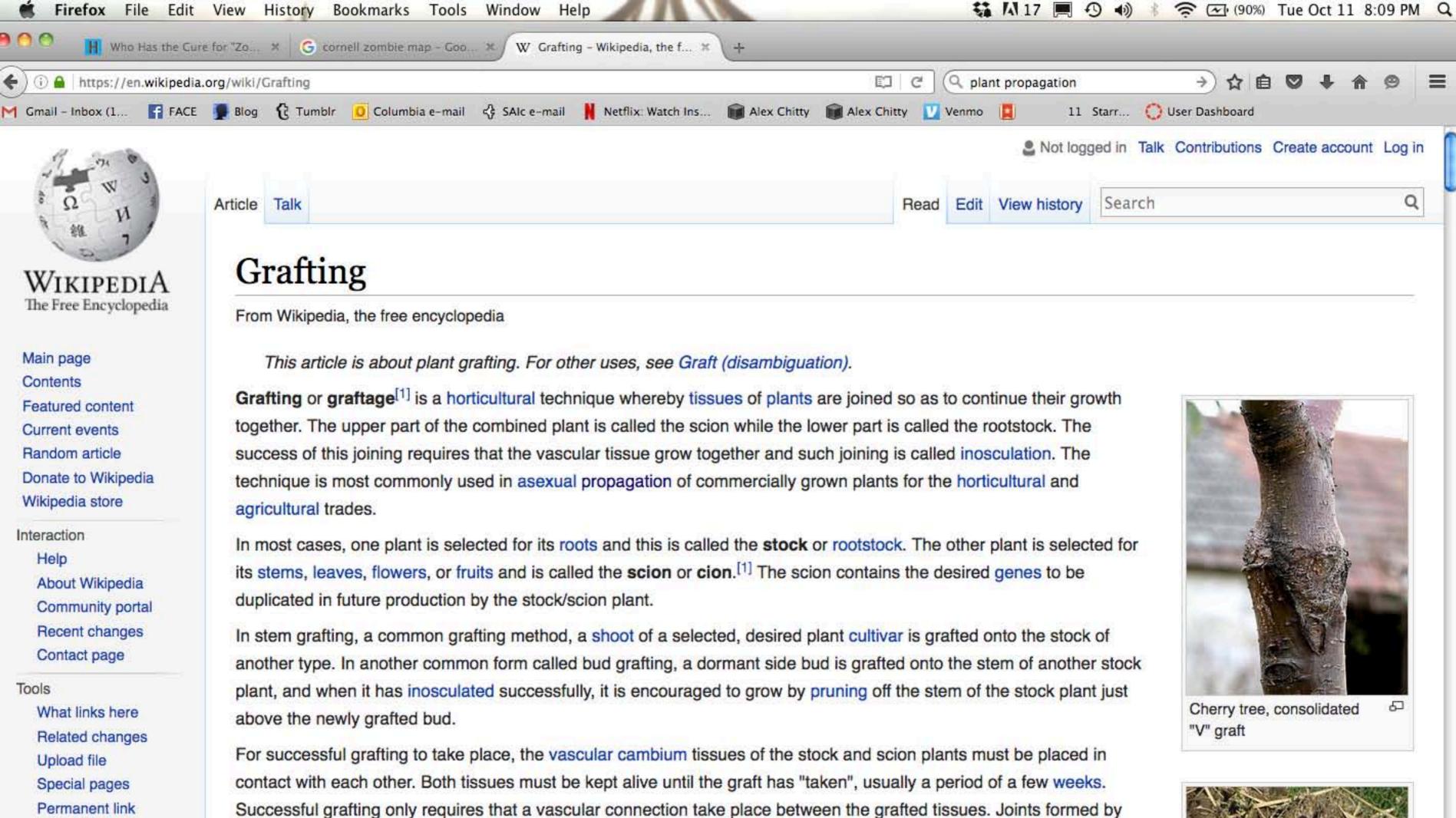
Copyright, on the other hand, protects *expression*, not the underlying facts or ideas embodied in that expression. ⁷ Copyright protection and the free flow of ideas are fully congruent — and, in fact, by providing an incentive to disseminate expression of ideas, copyright protection encourages the contribution of new ideas into the public domain.



An electric seed-propagation mat is a heated rubber mat covered by a metal cage which is used in gardening. The mats are made so that planters

https://en.wikipedia.org/wiki/Offset_(botany) Intaining seedlings can be placed on top of the metal cage without the risk of starting a fire. In extreme cold, gardeners place a loose plastic cover over





grafting are not as strong as naturally formed joints, so a physical weak point often still occurs at the graft because only

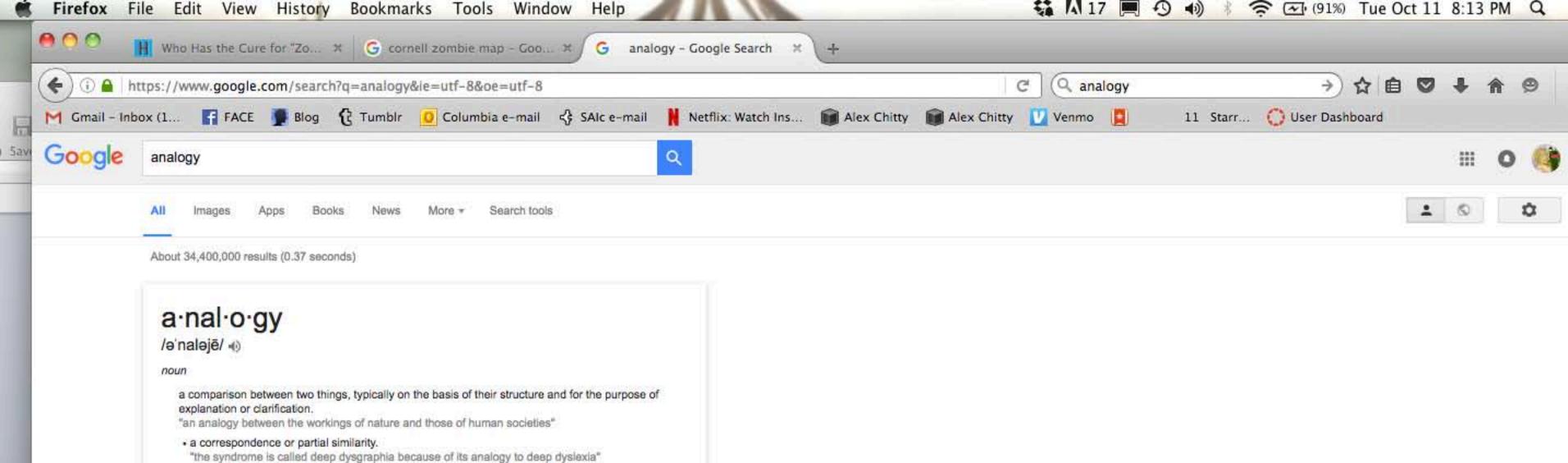
the newly formed tissues inosculate with each other. The existing structural tissue (or wood) of the stock plant does not

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a similarity between like features of two things, on which a comparison may be based: the analogy between the heart and a pump. 2. similarity or comparability: I see no analogy between your problem and mine.

Analogy - Examples and Definition of Analogy - Literary Devices

a thing that is comparable to something else in significant respects.

Translations, word origin, and more definitions

"works of art were seen as an analogy for works of nature"

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An analogy is a comparison in which an idea or a thing is compared to another thing that is quite different from it. It aims at explaining that idea or thing by comparing it to something that is familiar. Metaphors and similes are tools used to draw an analogy.

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a comparison of two things based on their being alike in some way. ; the act of comparing two things that are alike in some way. Source; Merriam-Webster's ...

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