

Intellectual Property Law

- Short overview
 - I am not a lawyer...
- Copyright, patents, trade secrets, trademarks
- Have you heard about recent issues?

SWE-IP-1

Copyright



- Creative works
- Until 70 years after creator's death
- Includes:
 - Novels, poetry, movies, plays, sheet music, recorded music, software, photographs, drawings
- Does not include:
 - Ideas, facts, algorithms, processes
- Creator has exclusive right to copy
 - Can be licensed or sold
 - Also: exclusive right to create derivative works
 - Does not have right to restrict resale ("first sale doctrine")
- Work for hire
 - Copyright belongs to employer
 - 95 years from publication or 120 from creation (shorter one)

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Fair Use

- Important exception to copyright
- Copyright does not apply to:
 - Copies of small portions for reviews
 - Copies for searching (like Google)?
 - not finally decided yet...
 - Copies of small portions for advertising
 - If copying is needed for news reporting
 - the one photograph of JFK being shot...
 - Parodies
 - Copies of small portions for educational and scientific purposes
 - Reverse engineering
 - not finally decided yet...
 - Copies for personal use (i.e., for one person)
- Vague, not well defined

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Copyright Law

- No registration or license necessary
 - Work is copyrighted as soon as created (“fixed”)
- Can register copyright with Library of Congress for additional protection
 - Small fee
 - Prerequisite for statutory damages (within 3 months)
- © or “all rights reserved” considered useful
 - But not required
- Statutory damages
 - Up to \$150,000 per infringement
 - Courts have decided, for example: \$20,000 per copied CD
 - No actual damages need to have occurred!
- Digital Millennium Copyright Act (DMCA)
 - makes devices to circumvent copyright illegal
 - forces Web hosts to take down pages if copyright violation is suspected, but protects them from damages

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Copyright Issues

- Law developed in early 18th – early 20th centuries
 - Assumes large, expensive printing presses
 - Hard to apply to modern technology
 - Today: copying is cheap and can be done in less than a second
 - Integral part of computer technology
- Cases:
 - “Betamax decision” (video cassette recorders)
 - Sony versus Universal (1984)
 - File sharing
 - MGM versus Grokster (2005)
 - Digital TV recorders
 - TiVo, “broadcast flag”, not decided yet
- Statutory damages make copyright a dangerous thing

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Patents

- Patents protect ideas and inventions
- Term: 20 years after filing
- Must be filed at US Patent Office
 - Filing fee around \$1000
 - Preparing application costs on average \$10,000
 - \$100,000 not uncommon
 - Exclusive right to use the idea or invention
- Trade-off:
 - Must agree for the idea to be published
- All recent patents are online:
 - <http://www.uspto.gov/>
- Requirements:
 - New
 - Not obvious
- It's not required that the invention is good for anything...
- Damages are small; but injunction to stop possible

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Software Patents

- Only legal since 1980s
- Patents for algorithms, processes, business models
- Famous examples:
 - Amazon's "One-Click" patent
 - RSA encryption algorithm
 - MP3 music compression format
- Problems with software patents
 - Often very vague
 - Patent office not competent enough to determine obviousness
 - Very complex matter
- There are patents for...
 - Playing games over a network
 - Using a Web site for selling to several countries

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Trade Secrets

- Laws to protect trade secrets
- It's a crime to publish a trade secret you have access to (e.g., through your job)
- No protection for trade secrets once they are in the open
- Famous example:
 - DVD encryption mechanism

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Trademarks

- Trademark: name used to distinguish a product
 - Coca-Cola, Apple, Microsoft, Visa...
- Includes names, logos, product shapes,...
- Term: until trademark falls out of use or becomes household term
 - “Aspirin” (was trademark of Bayer)
- Only protected as far as new
 - E.g., no trademark on “Windows”
- Famous examples
 - Restaurants selling Pepsi as “Coke”
 - Apple Computers versus Apple Music
 - Lindows versus MS Windows
 - Domain name squatters
 - mikerowesoft.com

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Trademarks

- Only relevant for commercial use
 - Journalists, novelists, private people can use trademarks
 - Exception: “trademark”
- Registration not required
 - But considered evidence of ownership
- Symbols:
 - ® registered trademark
 - ™ unregistered trademark
- Trademark infringement
 - Causing confusing between products
 - e.g., selling your homemade software as “Microsoft”
- Trademark dilution
 - New in 1995
 - Additional protection for famous trademarks
 - Also outlaws tarnishment of famous trademarks

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