Introduction to Intellectual Property

- **Discussion: How is it different?**
  - Going to Best Buy & walking out with a copy of Modern Warfare 2 without paying for it.
  - Finding a site on the Net to illegally download Twilight & installing it and playing it.
  - Getting a bootleg copy from your friend.

View of work product as your property

- What about value from literary, artistic and more scientific works?
- Should there be rights given to this?
  - Value added by your efforts: John Locke’s labor-desert theory.
    - e.g., A farmer, crops & animals
  - Property theory in general: Utilitarianism, greater good
  - Hegel’s Personality theory, as an expression of self

  ➢ Western viewpoint vs. most of the world

US legal background for IP

- **US Constitution, Article 1, § 8**
  
  "The Congress shall have the Power …

  To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

- What happens after the time for protection elapses?
Societal debates on IP

- The difficulty of ‘owning an idea,’ Thomas Jefferson, p. 107
- *Is the protection promoting progress or limiting progress?*
  - Suitability: Ex. John Phillips Sousa’s view on recorded “canned music” circa 1913
- *What constitutes a reasonable “limited time”?*
  - Continuous increase in term length, p. 119
- The digital dilemma

What is being protected?

- With intellectual property we are protecting the “creative expression” of the work.
  - The creative expression includes:
    - organization of ideas
    - presentation
    - characters and events
- Facts, ideas, concepts, processes and methods of operation cannot be copyrighted.
- Specific processes can be patented, but not everything that processes can get a patent. For example, no one can patent the concept of a word processor.

4 kinds of protection for IP

1. Copyright - as a "literary" work
2. Patent – an invention or process
3. Trademark - as a representation
4. Trade secret – confidential process/technique for competitive advantage
Copyright Law

• Copyright law changed substantially in 1978.
• A copyright now occurs as the work is completed.
• The work does not have to be published.
• No requirement to register to get a copyright, but registration has key benefits:

Excellent FAQ:
http://www.copyright.gov/circs/circ1.pdf

Rights of a copyright holder

• Exclusive right of the holder to
  – Reproduce
  – Create derivative works
  – Distribute copies
  – Perform and display the work publicly (... for sound, to transmit recording)

Things to know about Copyright Law:

• To what does having a copyright entitle the holder?
  – 4 rights, previous slide (8)
• Who can claim a copyright?
• Duration of a copyright? Two possibilities:
  – Usual: Life + 70
  – Work for hire: earlier of 95 yrs after pub. or 120 yrs after creation
• There is no "international" copyright.
• A copyright does not give absolute protection - some "copying" allow for fair use.
Copyrightable work test:

The work must be:

1. Original
   - Independently created (not copied from other works)
     - Acuff-Rose Music v. Jostens, songwriter claim
     - Discovery of facts and phenomena cannot be copyrighted, but presentation can be
   - with a minimum creativity req.
     - Very minimal std.

Copyrightable work test: cont’d

2. Work of authorship
   - There is no standard of artistic merit
   - Cts look for human involvement
   - Doodles, fine literature, oil paintings, and polaroids all eligible
   - Conversations, practical jokes are NOT copyrightable unless there is some intent to publish

3. Fixed in a tangible medium of expression
   - Embodied in a copy

Copyrightable test key points:

- So far, we’ve examined fact patterns about the originality test
  - Looking for independently created work & with a minimum of creativity
- Fact patterns showed the need for
  - Work to be original to the author and/or author added new elements
  - Human involvement (not to be a "slavish copy")
Key Points cont’d
• For Works of Authorship
  – There is no standard of artistic merit
    • Doodles, fine literature, oil paintings, and Polaroids all eligible
    • Again, Cts look for human involvement
• Conversations, practical jokes are NOT copyrightable unless there is some intent to publish
  • See Estate of Hemingway case

Works of Authorship cont’d
• Copyright is not available for words or short phrases or slogans
  – Why not?

  – BUT, those items may qualify for another kind of IP protection. What is it?

Works of Authorship, Key Points cont’d
• Requirement of human involvement
  – Works produced by mechanical process or random process without human involvement do not qualify
• Typical works of authorship:
  – literary, musical, dramatic, pantomimes/choreographic, graphic & sculpture, movies, sound recordings, architectural
Works of Authorship fact patterns:

• IMs
• Whale songs
• “Photoshopped”
• Elephant

3. Fixed in tangible medium

• Writings
• Definition of fixed is viewed broadly: books, notes, recording, etc.
• Must be tangible
• Until fixed by author or authorization, not protected by ©
• © begins when fixed

Fixed fact patterns:

• Short Story
• Idea for story
• Musician
• Improv