




Intellectual Property

Class 1



Why did you decide to take this course?

- A. To fulfill my credits to graduate.
- B. IP sounds cool and/or *interesting*.
- C. I currently work or **hope** to work in an IP firm / department.
- D. I'm attending an IP class?

Intellectual Property (IP)

- **Intellectual Property**

- Intangible
- Idea → tangible
- Exclusive rights

- **3 Main Areas**

- Copyright
- Trademark
- Patent

- **3 Types of Property**

- Real Property (e.g., Land, Territory, Mineral rights, etc.)
- Chattel (e.g., football, umbrella, car, etc.)
- **Intellectual Property** (e.g., Copyright, Trademark, Patent, etc.)

Types of Intellectual Property: Copyright

- What can be copyrighted?
 - EXPRESSIONS embodied in "works"
 - Books, music, paintings, radio broadcasts, etc.
- How does copyright work?
 - A copyright attaches automatically as soon as the work is put into a 'tangible medium.' (Common Law)
 - Copyright must be registered if rights-holder is looking to sue for infringement in certain courts. *Registration grants standing*
 - Copyrights must be registered to achieve certain awards (e.g., attorneys' fees, statutory damages - if promptly registered).
 - Copyright notice is recommended: the copyright symbol: ©
 - The copyright owner has exclusive rights to that work.
 - Others are not allowed to copy or modify the original work for commercial benefit.

Types of Intellectual Property: Trademark

- The Lanham Act - trademark statute
- What is trademark?
 - Consumer Protection
 - Logo, color combination, slogan, distinctive packaging
 - Identification associated with a good/service
- How does trademark work?
 - Trademark protection attaches as soon as a mark is used in commerce.
 - After trademark registration, the trademark symbol can be attached: ®
 - Trademark registration grants certain rights such as a presumption of ownership and exclusive use.
- Service mark v. Trademark

Types of Intellectual Property: Patent

- What can be patented?
 - New, useful, "non-obvious"
 - Invention, design
- How do patents work?
 - Unlike copyright and trademark, a patent must be applied for first, and, if all requirements are met, a patent will be granted.
 - Protection from:
 - Reverse engineering
 - Independent discovery

Types of Intellectual Property: Patent

- Trade secrets
 - No term of years
 - No protection against reverse engineering or independent discovery.

"A country without a patent office and good patent laws is just a crab and can't travel any way but sideways and backwards."

- Mark Twain



What type of IP law seems most interesting?

- A. Copyrights
- B. Trademarks
- C. Patents
- D. Not sure yet

The Scope of Protection of IP Law

- Having an IP right does not give the right to use
 - IP rights give the right to “exclude.”
 - Can't use the right (even as the rights-holder) if the use would violate either a law or public policy.
 - Ex: Non-physician inventing particular surgical procedure.
- Doctrine of Exhaustion
 - IP rights-holder *can* prevent certain things (someone else passing off the work as his own) but not other things (the work being re-sold).

The Scope of Protection of IP Law

- What can't be patented?
 - Laws of Nature
 - Facts, mathematical formulas

"Scientists investigate that which already is; engineers create that which has never been."

- Albert Einstein

- *Diamond v. Chakrabarty*, 100 S.Ct. 2204 (1979)
- *Bilski v. Kappos*, 129 S.Ct. 3218 (2010)

The Scope of Protection of IP Law

- Patent law was meant to protect
 - "anything under the sun made by man."
 - This does NOT include things like gravity.
 - ...but can use gravity to invent something else that can ultimately be patented.
- Difference between new and not understood or recognized prior to today

The History of Intellectual Property Law

- (history?! breathe in, breathe out...) ☺
- We give protection in order to:
 - *"promote the Progress of Science and the useful Arts."* Art.I.8.8.
 - Incentive to create
- A long, long time ago...
 - Guilds in Medieval Europe
- "Statute of Monopolies" (1623)
 - Gave 14 years of exclusive control
- "Statute of Anne" (1710)
 - Initial 14-year period
 - Possibility of 14-year renewal

History of IP Law, cont.

- The 13 Original Colonies
 - Each state had its own body of patent law.
 - United States Constitution, Article 1, Section 8, changed this, and unified it under Federal Law.
 - Federal courts have *exclusive jurisdiction*.
 - Now there is more uniformity.
- Federal law controls, but sometimes you have to look at basic principles of the law for an issue within an issue.

History of IP Law, cont.

- Ex. #1: Contract Law
 - When using contract law to protect an IP interest, the courts look for 3 things beyond the basic contract requirements:
 - The idea to be protected must be "novel and concrete;"
 - Either an express or implied agreement between the parties under which the idea was 'turned over';
 - The person the idea was told to has to actually have *used* the idea.

History of IP Law, cont.

- Ex. #2: Tort Law
 - Misappropriation - A work product (usually information) is created by one party, and then used by another party for commercial purposes.
 - To be guilty of misappropriation, you need the following elements:
 1. The product (e.g., information) was gathered by "victim party" at a cost;
 2. The information is time-sensitive;
 3. The 2nd party's use of the gathered info constitutes "free-riding" on the 1st party's efforts;
 4. The 2nd party is in direct competition with the 1st party for the information;
 5. The ability of the 2nd party to "free-ride" would reduce the incentive of the 1st party to gather the info in the first place.
 - International News Service v. Associated Press

Governing Law, Courts & Agencies

- The United States Code (USC) -
comprised of 50 sections, more than 2 of
which are devoted to Intellectual
Property Law.
- Title 17 - Copyright Law (13 chapters)
 - Establishes U.S. Copyright Office
 - Special chapters for complex issues

Governing Law, Courts & Agencies

- Title 35 - Patent Law (4 sections)
 - Deals with authority of the Patent and Trademark Office (USPTO)
 - How to procure a patent
 - How to protect a patent
 - How to comply with the Patent Cooperation Treaty
- Title 15 - Trademark Law (chapter 22)
 - Doesn't have its own Title, only one chapter here devoted to TM Law.
 - Other areas scattered throughout the USC dealing with Trademark/IP issues.
 - Ex: 18 USCS §1832 makes it a federal crime to steal trade secrets.

Questions?

- Open to student questions, concerns, confusion about subject matter.
- Open to student questions about the course.

THANK YOU