

# **IP Law**

Copyright  
DMCA

Trademark

Patent

Trade Secret

# Copyright - Definition

Copyright protects "original works of authorship, fixed in a tangible medium of expression".

In the following categories: literary, musical, dramatic, choreographic, pictorial, sculptural, audiovisual, sound, architectural.

Not in these categories: ideas, procedures, processes, systems, methods of operation, concepts, principles, or discoveries.

# Copyright - Bundle of Rights

Reproduce

Distribute

Publicly Perform / Display

Create derivative works

Transfer / Sell work or rights

License rights

Owner may sue for the infringement of the  
above rights

# Copyright - Duration

Author's life plus 70 years.

Or if made by a corporation, 95 years after publication or 120 years after creation.

Originally in 1790:

14 years + 14 more years if author still alive

# Copyright - Why is this a good idea?

We want to reward authors for being creative.

Not all authors are motivated purely by a desire to create art.

# Copyright - Fair Use

Fair use factors:

- 1) Purpose and Character of the use  
(commercial vs. educational non-profit)
- 2) Nature of the copyrighted work
- 3) Amount of work copied in relation to entire work
- 4) Effect of use on potential market or value of copyrighted work

# Copyright - Example 1

Alan writes a novel and titles it "Code Monkey".

It becomes a bestseller almost overnight.

Bob decides to copy and sell the content of the novel under the title "Source Simian".

Can Alan win a copyright suit against Bob?

# Copyright - Example 2

Gene is an artist, hired to plan and create a unique garden for the City. Gene creates precisely designed beds of flowers and bushes in ways that have never been seen before. After six months, the plants have grown and the City wants to trim them down. Gene sues, saying he owns the copyright to his work of art, and the City cannot alter it without his permission.

What result and why?

# DMCA

Digital Millennium Copyright Act

Passed in 1998 in order to "modernize" some aspects of copyright law.

# DMCA - The Good Part

ISPs and Intermediaries are not responsible for infringement by users of their systems.

To receive protection, Intermediaries block infringing content when they are notified of it.

# DMCA - The Bad Part

Circumvention of technological copy-protection methods is illegal.

Circumvention for Fair Use purposes may be legal, but only if you have a right to access the material to begin with.

A separate crime is created for trafficking in anti-circumvention software.

(penalty: \$500,000 or 5 years in prison)

# DMCA - Research Exception

There is an exception under the DMCA for legitimate research into copyright controls...

... but only for research into the cryptographic elements of the controls

# DMCA Example 1

E-Book company publishes a novel. They utilize rot13 encryption to "encrypt" the content. Researcher Rhonda discovers this, and publishes an analysis of the encryption method, describing how she broke it and was able to read the novel.

E-Book company sues Rhonda for violating DMCA. What happens?

# DMCA Example 2

E-Book company publishes a novel. They utilize a special method of protection which will only display the novel on the E-Book company's reader. Hacker Dave finds this annoying, figures this out, and creates a work around so that he can display his purchased copy on any of his devices. He also publishes this discovery so that anyone anywhere can also do this.

E-Book company sues Dave for violating DMCA.  
What happens?

# **Trademark - Definition**

Identify the origin of goods in commerce

# Trademark - Rights

Protection against same and similar marks used to identify same or similar goods.

Would consumers be deceived or confused as to the origin of the goods?

If Registered:

Presumption that trademark is valid, which is indisputable after 5 years.

# Trademark - Duration

Forever!

Yes really!

# **Trademark - Why is this a good idea?**

Consumer protection.

Rewards companies with quality products

# **Trademark - Fair Use**

Product Comparison

Product Descriptions

Product Reviews

# Trademark - Examples 1a - 1c

Steve runs a general store and decides to order a bunch of stuff from alibaba.com to and label it with his own in-house brand. Steve is always hearing people talk about how great Apple Computers are, so he decides to use that name on his items. Steve sells Apple Laptops, Apple Underwear, and Apple Juice. Apple Computers finds out about this and sues.

What result for each item?

# Patent - Definition

any non-obvious, useful, technological

"process, machine, manufacture, composition of matter, or improvement thereof"

not patentable: laws of nature, physical phenomena, abstract ideas

# Patent - Rights

A monopoly over

Making

Using

Selling

Importing / Exporting

Licensing

# Patent - Duration

20 years

# **Patent - Why is this a good idea?**

We want to reward inventors

Encourage technological improvement

# Patent - Recent changes

Previously, US had a "first-to-invent" system, and this year has switched to a "first-to-file" system.

# Patent - Example 1a

Ivan notices that right before an earthquake, his dog starts barking and behaving in a strange way. Ivan files a patent for dogs as earthquake detectors.

Success?

# Patent - Example 1b

Ivan goes on to create a device which analyzes the behavior of nearby dogs and the noises they make, and then warns humans in the area that an earthquake is coming and they should take shelter. Ivan files for a patent.

Success?

# Patent - Example 1c

Paul takes Ivan's device and figures out how it works. Paul adds a volume control knob to the device because some people have complained that the warning it gives is too loud. Paul tries to patent his invention.

Success?

# Comparisons: Copyright vs. Trademark

If you remember our earlier example...

Alan writes a novel and titles it "Code Monkey".

It becomes a bestseller almost overnight.

Carl writes and sells his own original novel but also uses the title "Code Monkey".

Alan sues under both Copyright and Trademark.

Does Alan win under either theory?

# Comparisons: Trademark vs. Patent

Eastern creates, sells, and advertises their distinctive quilted design toilet paper which they claim makes their product more absorbent than other brands.

Western creates their own toilet paper with a very similar quilted design.

Eastern sues Western under both trademark and patent.

What happens?

# Comparisons: Copyright vs. Patent

A thought exercise...

Can you copyright or patent a cake recipe?

Can you copyright or patent the rules to a card game?

Can you copyright or patent computer code?

# Trade Secret

Anything whose value is derived from the fact that it is not generally known or easily ascertainable.

# Questions