INTELLECTUAL PROPERTY

IP & the US Economy

Strong IPR protection and enforcement are essential to creating jobs and promoting economic prosperity; opening new markets for U.S. goods and services; and fostering investment in innovation and development.

IP-intensive industries account for:
- 38% of GDP
- 52% of merchandise exports
- 27.9 million jobs
- 46% wage premiums

IP Crime’s Annual Cost to the U.S. Economy:
- $180 Billion from theft of trade secrets
- $18 Billion from pirated U.S. software
- $29 Billion in displaced legitimate sales due to counterfeit and pirated goods
WHAT YOU NEED TO KNOW

• What is intellectual property?

• 4 types of intellectual property protections in US
  • What they apply to
  • How to obtain them
  • Limitations

• What is Fair Use?

INTELLECTUAL PROPERTY

• Pre-dates digital computing
  • Books, songs, movies, paintings, inventions

• Designed to make it appealing/profitable for folks to create and share innovation
  • Any unique product of the human intellect that has commercial value

• Intellectual property ≠ physical manifestation
**TRADE SECRET**

- Confidential piece of intellectual property that gives company a competitive advantage
- Never expires
- Not appropriate for all types of intellectual property
- Reverse engineering allowed
- May be compromised when employees leave firm
TRADE/SERVICE MARK

• Trademark: Identifies goods
• Service mark: identifies services
• Protects “brand name,” logos or slogans
• Typically sector & jurisdiction dependent
• Does not expire, except if:
  • Becomes a common noun
  • Companies stop using
  • Companies stop clamping down on misuse

COPYRIGHT

• Provides owner of an original work five rights
  • Reproduction
  • Distribution
  • Public display
  • Public performance
  • Production of derivative works
• Copyright protection has expanded greatly since 1790 (28 years to Life+70/95)
• Bound to specific jurisdiction
PATENTS

Public disclosure and documentation of “invention”, giving owner exclusive rights to making, using or selling said invention for 20 years

- 4 types:
  - **Utility patent**: “any new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement thereof”
  - **Design patent**: “… new, original, and ornamental design for an article of manufacture.”
  - **Plant patent**: “… invents or discovers and asexually reproduces any distinct and new variety of plant.”
  - **Software patent**: “…

PATENTS

- Granted in individual jurisdictions
  - Like trademarks and copyrights

- Some standardization, but some jurisdictions don’t allow patents for business processes and software

- Patents can be challenged and overturned
  - Previous art
  - Non-obvious clause
### IP OVERVIEW

<table>
<thead>
<tr>
<th>Type</th>
<th>Protects</th>
<th>Infringement</th>
<th>Registration</th>
<th>Term</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Patent</td>
<td></td>
<td></td>
<td>Yes</td>
<td>20 years from filing</td>
<td>Expensive</td>
</tr>
<tr>
<td>Utility</td>
<td>Invention</td>
<td>Make, use, offer, sale, import</td>
<td></td>
<td>15 years from filing</td>
<td>Moderate</td>
</tr>
<tr>
<td>Design</td>
<td>Look &amp; feel</td>
<td></td>
<td></td>
<td>20 years from filing</td>
<td>Expensive</td>
</tr>
<tr>
<td>Plant</td>
<td>Organism</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Software Business</td>
<td>Method</td>
<td></td>
<td></td>
<td>Subtype of Utility</td>
<td>Very Expensive</td>
</tr>
<tr>
<td>Trademark</td>
<td>Brand</td>
<td>Use in commerce</td>
<td>Optional</td>
<td>Indefinite, by use</td>
<td>Cheap</td>
</tr>
<tr>
<td>Copyright</td>
<td>Authorship</td>
<td>Reproduction</td>
<td>Optional</td>
<td>Life+70 or 95 years</td>
<td>Cheap</td>
</tr>
<tr>
<td>Trade Secret</td>
<td>Information</td>
<td>Theft</td>
<td>No</td>
<td>Indefinite</td>
<td>Depends</td>
</tr>
</tbody>
</table>

### FAIR USE

Sometimes legal to reproduce a copyrighted work without permission for commentary, parody, criticism, news reporting, research, teaching or scholarship

- Courts consider four factors in “balancing test”
  - Purpose and character of use
  - Nature of work
  - Amount of work being copied
  - Effect on market for work
CHALLENGES

• Copyright creep

• Push for patent extension

• Flawless copies of digital content

• DRM

• DMCA

DIGITAL RIGHTS MANAGEMENT (DRM)

• Actions owners of intellectual property take to protect their rights
  
  • Encrypt digital content
  
  • Digital marking so devices recognize content as protected
DRM & DMCA: DIGITAL MILLENNIUM COPYRIGHT ACT

• Extended length of copyrights, and brought US into line with international community

• Extended copyright protection to music/media broadcast over Internet

• Made it illegal for anyone to:
  • Circumvent encryption schemes or security mechanisms on media or computer systems, for any purpose
  • Requires sites to provide takedown-notice mechanisms and sets penalties for non-compliance

PROBLEMS WITH DRM

• DRM could reduce competition/lock consumers into ecosystem

• DRM sometimes has unintended consequences

• How do users consent to DRM?

• DRM undermines fair use

• Ultimately punishes legitimate users, can be counter-productive
So you want to rent a movie?

Check Netflix Instant Streaming Movies

Oh, never mind, it's closed because no one has gone there in 4 years

Download illegally? Feeling you've done your due diligence

Success!

Is it there?

Yes

Really?

No

Go to Blockbuster

Was the movie released within the last two months?

Yes

No

Go to Red Box

No

Yes