



Lecture 2

Law 115
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Agenda

IP Overview

- Why Have IP Law?
- Tangible vs. Intangible Property
- IP Law Helicopter View
- Big Questions in IP Law

Copyright

- Origins of US Copyright Law
- What is Protected
- Copyright Rights
- Who Owns the Copyright
- How to Get Protection
- Example (if there is time)

IP Overview



Why Have IP Law?



Labor/Utilitarian Rationale
(John Locke)



Personhood Rationale
(Georg Wilhelm Friedrich Hegel)

Tangible vs. Intangible Property

Two main types of “traditional property”

1. Real property = **immovable** property such as real estate and land (also any buildings, machinery, wells, dams, ponds, mines, canals, roads on the land)
2. Personal property = **movable** property such as a car, boat, computer, clothing, or other similar goods

Intellectual property is **intangible** property.

Tangible vs. Intangible Property

How are they different?



VS

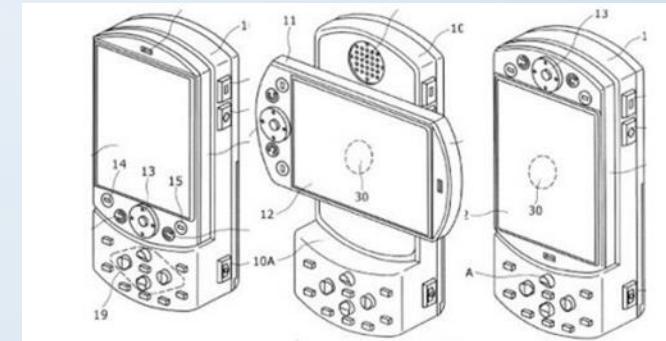


1. Use of intangible property can be non-exclusive
2. Use does not **always** affect value

IP Law Helicopter View: Patent

Patent law protects any ***process, machine, manufacture, or composition of matter*** that is new, useful, and non-obvious.

- Federal law in the US
- Examples: Amazon's once click patent, various patens on different aspects of the iPhone and other consumer devices



IP Law Helicopter View: Trade Secret

Trade secret law protects **information** that is kept secret and not generally known to the public.

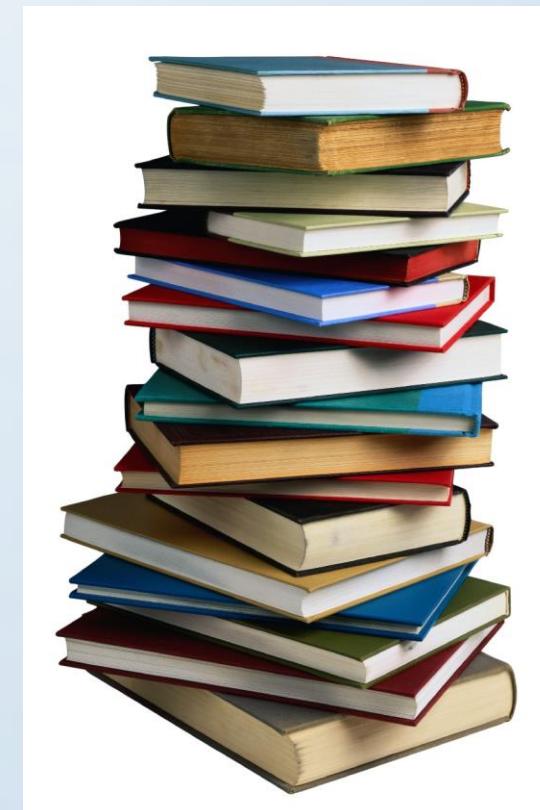
- Trade secret law is usually state law
- Examples: formula for Coca Cola, customer lists, tweaks to manufacturing/artistic process



IP Law Helicopter View: Copyright

Copyright law protects ***original works of authorship*** that are fixed in a tangible medium of expression.

- Federal law in the US
- Examples: books, artwork, music, sound recordings, and more



What Does IP Protect: Trademark

Trademark law protects anything that can distinguish the **source of a product or service** from the products or services of another.

- In the US, there are both state and federal trademark laws
- Examples: almost any logo, slogan, or design associated with a particular brand
- Trade dress



What Does IP Protect: Right of Publicity

Right of an individual to control the commercial use of his ***name, image, likeness*** or other unique and identifiable aspects of her identity

- In the US, rights of publicity laws vary by state to state
- Related to privacy laws



IP Law Helicopter View

- 1. Patent
 - 2. Copyright
 - 3. Trade Secret
 - 4. Trademark
 - 5. Right of Publicity
- 
- Incentivizing creative and scientific development
- Ensuring integrity in the marketplace, protecting individual rights (consumer/privacy)

Big Questions in IP Law

IP Law Topic	Other Legal Areas With Tension and/or Overlap
Patent	Antitrust and competition laws
Trade Secret	Antitrust and competition laws
Copyright	Freedom of Expression Antitrust and competition laws
Trademark	Freedom of expression Antitrust and competition laws Advertising laws
Rights of Publicity	Privacy laws

Big Questions in IP Law

Should intangible intellectual creations be protected by law?

1. If so why?
2. If so what?
3. If so how?
4. If so how much?

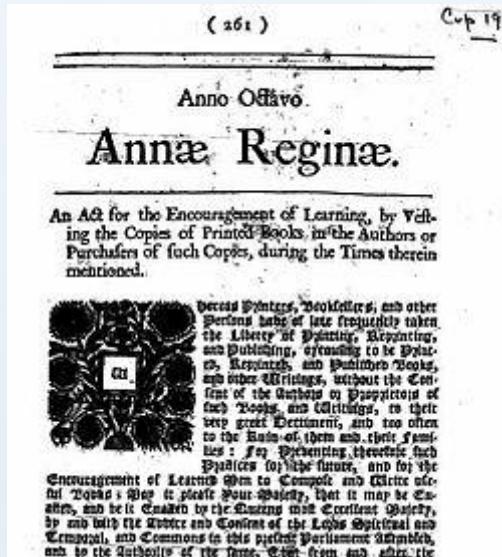
Would intellectual creations exist without IP law? Yes.

Would intellectual creation thrive without IP law?

Copyright



Origins of US Copyright Law



1710: Statute of Anne (England)

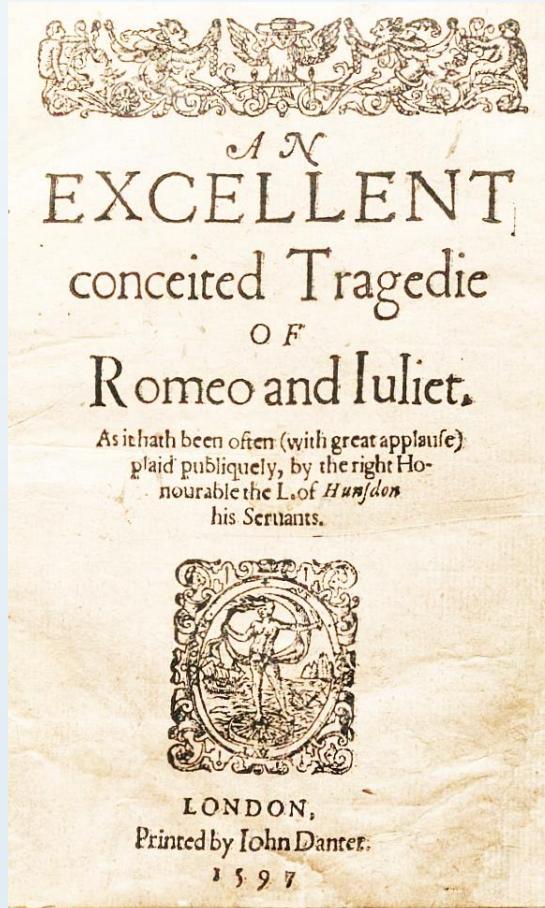
1787: U.S. Constitution Article I, Section 8, Clause 8

Congress is authorized “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.”



1790: Copyright Act

What is Protected (consider revision)



Copyright protects the expression of the idea, but not the idea itself.

Specifically copyright law protects “original works of authorship fixed in a tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.” 17 USC §102(a), §103.

What is Protected

Two Requirements→

1. Originality

- Does NOT mean new, novel, or unique
- An original work “owes its origin” to the author

2. Fixation: a work is fixed in a tangible medium of expression when it is “embodied in a way that is sufficiently permanent or stable to permit it to be perceived or otherwise communicated for more than a transitory period.”

What is Protected

The following works are “works of authorship” eligible for copyright protection:

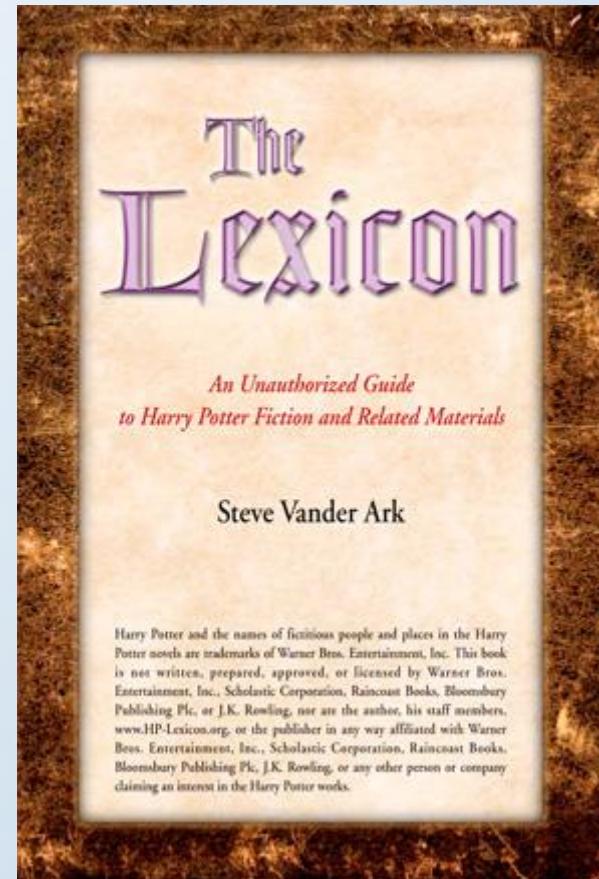
1. Literary works
2. Musical works
3. Dramatic works
4. Pantomimes and choreographic works
5. Pictorial, graphic, and sculptural works
6. Motion pictures and audiovisual works
7. Sound recordings
8. Compilations
9. Derivative works



What is Protected

Are any of the following protectable under copyright?

1. Artistic representation about a historical event
2. “Fictional facts”
3. Recipe for chicken soup
4. Software code



Copyright Rights

Copyright protection is an assortment of exclusive rights:



- Making copies
- Distribution (sale, lease, license)
- Public performance
- Public display
- Creating derivative works (see next slide)
- Moral rights in some cases (attribution and integrity)

Creativity Without Copyright



1. Explain why fashion is generally not protected by copyright.
2. Are recipes protectable under copyright? What about cookbooks?
3. How do stand up comedians protect their jokes as intellectual property? Can they?
4. Without copyright, how do the fashion, food, and comedy industries thrive? Do they need copyright to be creative?

Copyright Rights: Derivative Works

Derivative works are creative works derived from other creative works.

- Translation of a novel
- Dramatization of an artistic work
- Abridged version of a literary work
- Screenplay and movie adaptation of a novel

Everything is a Remix Part 1



- <http://www.everythingisaremix.info/everything-is-a-remix-part-1/>
- <http://vimeo.com/14912890>

Who Owns the Copyright

Default Rule = the **author** of the work owns the copyright unless

- The work qualifies as a “work made for hire” OR
- The author assigned the copyright to someone else

Two Types of Work Made for Hire

1. **Employee/Employer:** Work was made by an employee as part of the scope of her employment
2. **Other type:** the work is...
 - Commissioned or specially ordered
 - Parties sign an agreement specifying work for hire
 - Work falls into one of nine categories

How to Get Protection

- Copyright protection is automatic at creation – from the moment the “expression” is “fixed”
- Copyright registration through US Copyright Office is NOT required to obtain rights
- Use of the © symbol informs others you recognize your rights and will enforce them, but it is NOT required to maintain rights



Example

