International Intellectual Property

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Overview of Class

• Goals
• Syllabus Review
• Topics Covered
  – What is Intellectual Property (IP)?
  – What theories support granting exclusive rights to IP?
  – How has IP shaped the global market?
  – What limits, if any, should be placed on the development of IP?
Preparation for Each Class

– **Definitions.** It’s part of the rule!

– **Theories.** Why is this rule?

– **Cases.** Five questions: (1) the *essential* facts; (2) the rule.; (3) the holding; (4) why did the judge reach that result; and (5) was it the right outcome?
What is intellectual property?
What distinguishes IP from Real Property?

“He who lights his taper at mine receives light without darkening me. Public goods can not, in nature, be exclusive.”

Thomas Jefferson
The Landscape of Intellectual Property Law

Slide courtesy of Peter S. Menell
Antitrust

Contracts

Property

Torts

Trade Secret

Unfair Competition

Right of Publicity

Patent

©

Right of Publicity

Unfair Competition

Trade Secret

Patent

Slide courtesy of Peter S. Menell
International IP

• There is no such as “international intellectual property”
  – Rights are created by each countries national law
  – Typically only applies to conduct that happens in that nation
International IP

• There is no such as “international intellectual property”

• International Treaties
  – Operates like an international IP
  – Establishes “National Treatment” for member countries
    • Establishes ground rules (subject matter, duration, etc)
    • Countries may have higher standards
International IP

- There is no such as “international intellectual property”
- International Treaties
  - Developed v. Developing Countries
International IP

- There is no such as “international intellectual property”
- International Treaties
  - Berne Convention
  - Trade-Related Aspects of Intellectual Property Rights (TRIPS)
  - Paris Convention / Madrid Agreement and Protocol
  - The Internet Treaties
International IP

• There is no such as “international intellectual property”

• International Treaties
  – Leading International Actors
    • United Nations / World Intellectual Property Organization (WIPO)
    • World Trade Organization (WTO)
    • The European Union
<table>
<thead>
<tr>
<th>Source of Law</th>
<th>Patent</th>
<th>Copyright</th>
<th>Trademark</th>
<th>Trade Secret</th>
<th>Right of Publicity</th>
</tr>
</thead>
<tbody>
<tr>
<td>“to promote the progress of science and the useful arts”</td>
<td></td>
<td></td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Subject Matter</th>
<th>Patent</th>
<th>Copyright</th>
<th>Trademark</th>
<th>Trade Secret</th>
<th>Right of Publicity</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Inventions”</td>
<td>Original works of authorship</td>
<td>Trademarks (et al), trade dress; domain names?</td>
<td>Business or technical information</td>
<td>Name, voice, likeness (gestures, mannerisms)</td>
<td></td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th>Standard for Protection</th>
<th>Patent</th>
<th>Copyright</th>
<th>Trademark</th>
<th>Trade Secret</th>
<th>Right of Publicity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Novel; non-obvious; utility</td>
<td>Original; fixed</td>
<td>Distinctive</td>
<td>Information not known</td>
<td>Invasion of privacy; comm. value?</td>
<td></td>
</tr>
</tbody>
</table>

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<tr>
<th>Duration</th>
<th>Patent</th>
<th>Copyright</th>
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<th>Trade Secret</th>
<th>Right of Publicity</th>
</tr>
</thead>
<tbody>
<tr>
<td>20 years from filing*</td>
<td>Life of author + 70 years</td>
<td>Perpetual</td>
<td>Until public knowledge</td>
<td>During life; post-mortum</td>
<td></td>
</tr>
</tbody>
</table>
Patents

• Subject Matter:
  – “inventions”; process, machine, manufacture, or composition of matter, or any new and useful improvement thereof
    • Limits- facts; ideas; inventions in the “public domain”

• Exclusive Rights:
  – To make, use, offer for sell. 35 USC §271(a)

• Validity:
  – Once registered, and for a period of twenty years from the filing date of the application (unless declared invalid). 35 USC §154(a)
Copyrights

- **Subject matter:**
  - “works of authorship”; “[O]riginal works of authorship fixed in any tangible medium of expression.” 17 USC §102
    - Limits: *idea, procedure, process, system, method of operation, concept, principle, or discovery,*

- **Exclusive Rights:**
  - Reproduce, prepare derivative works, distribute copies, perform, display, or play work publicly (depending on type of work). 17 USC §106

- **Validity:**
  - Rights exist as soon as it is created 35 USC §154(a)
Trademarks

• Subject matter:
  – “any word, name, symbol or device, or any combination thereof ... used by a person...” to distinguish the goods or services from that of another. 15 U.S.C. §1127
    • Limits: generic, descriptive, geographical, disparaging, abandoned

• Exclusive Right(s):
  – To use.

• Validity:
  – Rights exist as soon as it is created AND used.
Trade Secrets

• Subject matter:
    • Limits: sufficiently kept a secret; specific (if an idea); reverse engineering; antitrust

• Exclusive Right(s):
  – To keep it secret

• Validity:
  – Right exist as soon as it is created.
Right of Publicity

• Subject matter:
  – Private right v. property right; Restatement (Third) of Unfair Competition; *Haelen Laboratories v. Topps Chewing Gum*, 202 F.2d 866 (2d Cir. 1953)

• Exclusive Right(s):
  – To use (or not to use)

• Concerns with Validity:
  – Choice of law (situs / property; domicile / private), assignability, inheritability
Philosophical Perspectives

• Utilitarian/Economic Theory
• Locke’s Doctrines
  – Natural Rights
  – Labor Theory
• Personhood
• Social Planning Theory
Philosophical Perspectives

• Other Theories:
  – Libertarian Theory
  – Absolutist Theory
Design Your Own Product

• Close your laptop.
• Team up in groups.
• Pick one person to be the team’s spoke person.
• In 5-10 minutes, create a product.
  – Consider how this product might be unique and how you might prevent others from creating the same product.
  – How would you promote the package internationally?
  – What notices might you include (or exclude) from the package?
  – What concerns might you have with using a domain name / Internet to promote and sale that product?