Introduction to Intellectual Property Law

CJ341 – Cyberlaw & Cybercrime Lecture #9

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Topics
- General IP Overview (this lecture)
- Patents (Lecture #10)
- Trade Secrets (#11)
- Law & Order Criminal Intent: “Scared Crazy” & discussion

What is Intellectual Property?
- Intangible or intellectual assets
  - Novel production techniques
  - Better managerial methods
  - New / unique product features
  - Stylish brand images
- Results of unique creative processes
  - Paintings
  - Sculptures
  - Music
  - Writings (journalism, stories, novels, plays, letters….)
  - Photography

Why Protect Intellectual Property?*
- Allow creators to benefit
- Promote creativity
- Everyone encouraged to be productive, creative
  - Society progresses
  - Nation progresses
  - Humanity progresses

Types of IP Protection
- Patents
  - Granted by government agency
  - Provide ability to license ideas
- Copyrights
  - Allow protection against unauthorized copying
  - Permits negotiation of licenses
- Trade secrets
  - Undisclosed information or methods
- Trademarks
  - Protect unique identifiers of value

*With thanks to Karthik Raman, NU 2006
US Constitutional Issues

- Federal government authorized to regulate patents & copyrights
  - Article I, Section 8 of Constitution stipulates federal promotion of “progress of science and useful arts by securing for limited times to authors and inventors exclusive rights to their writings and discoveries
  - Also grants control over interstate commerce
    - Interpreted to mean control over trademarks and trade secrets for such commerce
- Supremacy Clause overrides state laws

US Legal Process for IP Laws

- Federal process
  - Patent Act administered by Patent & Trademark Office (PTO)
    - In Dept of Commerce
    - Individual bureaucrat can accept or reject application
    - Can set precedent for future similar applications
  - Copyright & trademark admin by Copyright Office
    - In Library of Congress
- State regulations often conform to models
  - Uniform Trade Secrets Act
  - Uniform Commercial Code
  - Uniform Computer Information Transactions Act
  - Restatement of Torts

Expanding Scope of IP Protection

- Political pressures to extend length of protection
- New laws passed in 1990s, 2000s
  - Digital Millennium Copyright Act (DMCA) gives more rights to copyright owners
  - Trademark protection strengthened
  - Sound recordings more strongly protected
  - Copyright length extended
  - Criminal penalties for TM counterfeits increased
  - New laws for theft of trade secrets
  - New penalties even for IP theft without personal gain
  - New IP policy council for enforcement coordination

Some Current Problems with IP Law

- Copyright restrictions too long?
- Patents being used to suppress innovation
  - Purchased by competitors, then deep-sixed
  - Patent trolls extort money from victims using overly broad patents
- Artists (e.g., film-makers) limited in portrayal of reality by trademark/copyright owners
- Restrictions on use of entertainment limits teachers
- EULAs in shrink-wrapped/electronic software overly restrictive

Excuses for Violating IP Laws – to Analyze

1. Everyone’s doing it.
2. We won’t get caught.
3. It’s the {software, music, gave, movie} company’s fault: if they don’t want theft, they should charge less.
4. But I need it and I don’t want to pay for it.
5. It doesn’t hurt anyone.
6. It only hurts a company – I wouldn’t steal it from an individual.
7. No software/music/game/movie should ever be copyrighted—it should always be free.

Now go and study