

# Introduction to Intellectual Property Law



## CJ341 – Cyberlaw & Cybercrime Lecture #9

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1

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## Topics



- General IP Overview
- Overview of Cases and Issues
  - Based on INFOSEC Year in Review database
  - ✓ <http://www2.norwich.edu/mkabay/iwir>
  - Copyright
  - Patents

2

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## Why Protect Intellectual Property?\*



- Allow creators to benefit
- Promote creativity
- Everyone encouraged to be productive, creative
  - Society progresses
  - Nation progresses
  - Humanity progresses

\*With thanks to Karthik Raman, NU 2006

3

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## Intellectual Property Law



- Several issues of interest
  - Copyright
  - Patents
  - Trademarks
  - Trade Secrets
  - Reverse Engineering
  - EULAs
- This lecture looks at some interesting cases drawn from IYIR database
- Following lectures look at law

4

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## Copyright



- 2000-02-09 iCraveTV
- 2003-09 RIAA Fines Child
- 2005-01 BSA Calls for Stronger Copyright Laws
- 2005-05 Google's Library Project Under Fire
- 2006-02 UMich Pres Defends Google Project

5

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## 2000-02-09 iCraveTV



A Canadian Web site, iCraveTV, was sued by a consortium of broadcasters and film owners for posting their intellectual property without license. The owners of iCraveTV retorted that Canadian law does not forbid such piracy. The CRTC (the Canadian equivalent of the US Federal Communications Commission) declined to intervene in the case. A federal judge granted the plaintiffs a temporary restraining injunction to stop the video pirates from further use of unlicensed materials.

[On 9 February,] A U.S. federal judge has issued a 90-day injunction against continued operation of the Toronto-based Web site iCraveTV, which captures TV programs from stations in Toronto and Buffalo and rebroadcast them live (along with new ads sold by iCraveTV) to Canadians. The company's founder takes the position that such activity is permissible under Canadian law, and that iCraveTV will reinforce its security mechanisms to make sure that the rebroadcasts would not be viewable south of the U.S.-Canadian border, and that the company would meet industry standards. But an executive of the Motion Picture Association of America protests: "There is no acceptable industry standard for piracy." (AP/San Jose Mercury News 9 Feb 2000)

6

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## 2003-09 RIAA Fines Child



### FILE-SHARING COMPANIES PAY FOR GIRL'S MUSIC SETTLEMENT

A coalition of companies that run Internet song-sharing services have offered to pay the \$2,000 settlement a mother agreed to pay the Recording Industry Association of America (RIAA) after it lodged lawsuits against her 12-year-old daughter (and 260 other defendants) for music copyright infringement. Wayne Rosso, president of the Internet file-sharing service Grokster charges: "These people give Joe Stalin a good name." And the group's executive director, Adam Eisgrau, adds: "We don't condone copyright infringement, but it's time for the RIAA's winged monkeys to fly back to the castle and leave the Munchkins alone." Before it filed the lawsuits, the RIAA was dismissive of predictions that "the recording industry's aggressive legal strategy might result in a consumer backlash." (Washington Post 10 Sep 2003)

7

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## 2005-01 BSA Calls for Stronger Copyright Laws



### BSA CALLS FOR STRONGER COPYRIGHT LEGISLATION

The Business Software Alliance (BSA) has released a white paper calling on government to strengthen laws meant to protect copyright holders from digital piracy. Fearing a situation like the one that record companies are grappling with, the BSA—which includes such companies as Microsoft, Intuit, and Symantec—urged lawmakers to take appropriate steps to ensure the enforceability of software copyrights and patents. An attorney for the group, Emery Simon, said the goal of the paper was not to encourage specific action but simply to identify a "problem that needs attention." The paper contends that a series of court rulings regarding the Digital Millennium Copyright Act have resulted in an "impediment to effective enforcement," but the group did not specifically call on lawmakers to revise that law.

8

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## 2005-05 Google's Library Project Under Fire



### GOOGLE UNDER FIRE FOR LIBRARY PROJECT

The Association of American University Presses has become the latest group to voice objections to Google Print for Libraries, a project in which the search engine is scanning some or all of the books in five university and public libraries in the United States and Britain. In a letter to Google, the organization questions the notion that copyright law allows Google to scan copyrighted works into its database, even if only small portions of those texts are available online. Peter Givler, the group's executive director, said that copyright law fundamentally applies to making copies, regardless of what is done with them. The Publishers Association, which represents publishers in England, has also objected to the project, raising many of the same objections as the Association of American University Presses. For its part, Google said it is working with publishers to address their concerns and to make the project beneficial to them as well. Hugh P. Jones, copyright counsel of the Publishers Association, said he has been in contact with Google but that so far the two groups have failed to agree. Chronicle of Higher Education, 23 May 2005

9

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## 2006-02 UMich Pres Defends Google Project



### MICHIGAN PRESIDENT DEFENDS GOOGLE'S BOOK SCANNING

Speaking at the annual conference of the Professional/Scholarly Publishing division of the Association of American Publishers, the president of the University of Michigan defended her institution's participation in Google's Book Search program. The program has upset many publishers and other copyright owners, who contend that the project violates their intellectual property rights. Mary Sue Coleman told conference attendees that the program "is about the social good of promoting and sharing knowledge" and argued that Thomas Jefferson would have loved it. Insisting that vast numbers of cultural artifacts are at risk of being lost due to insufficient efforts at conservation, particularly among libraries, Coleman characterized Google's project as one of preservation and her institution's participation as central to the university's mission. She noted that the University of Michigan had been "digitizing books long before Google knocked on our door, and we will continue our preservation efforts long after our contract with Google ends." Coleman's comment also included a clear defense of the rights of copyright holders. Her institution would not "ignore the law and distribute [protected material] to people to use in ways not authorized by copyright."

10

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## Patents



- 1997-05 Trend Micro Sues McAfee & Symantec
- 2000-09 British Telecomm Claims Hyperlinks
- 2003-05 SCO Threatens Linux
- 2004-01 Patently Absurd
- 2006-03 JSA Attacks Electronic Money Transfers

11

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## 1997-05 Trend Micro Sues McAfee & Symantec



Trend Micro Inc. sued McAfee Associates and Symantec Corp. for patent infringement because the competitors offer antivirus products that scan inbound files from the Internet for viruses. Trend Micro's General Counsel, Robert Lowe, said, "The broadest set of claims basically addresses when you have a server intercepting data being sent from one computer to a second computer, when you perform certain types of virus scanning processes such as separating high risk data from low risk data, and having certain types of predetermined actions that occur when a virus is detected, such as deleting it or storing it in a quarantine area." Other antivirus manufacturers might face lawsuits from Trend Micro as well, said the lawyer.

12

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## 2000-09 British Telecomm Claims Hyperlinks



It turns out that British Telecom has owned a U.S. patent covering hyperlinks for the last 14 years, but up until . . . [June had] made no attempt to exploit the patent commercially. The patent, which expires in 2006, was buried among 15,000 other global patents owned by the telecom giant until it was rediscovered "a few years ago" during a routine review of the company's intellectual property. BT has now decided to commercialize the technology, which allows Web surfers to move between pages by clicking on pictures or text — a move that could earn BT hundreds of millions of pounds. "We are not trying to stop anybody using the Internet. We simply want some reasonable royalties based on the revenues that other organizations are enjoying from making use of this intellectual property," BT said in a statement Monday. "We are not trying to take anything away from Tim Berners-Lee, but [BT] did invent a way of structuring information to make it easily accessible." The company added that it has spent the last two years researching its claim to the technology to make sure it holds up in court. "It is not something you want to shoot from the hip on," it said. (Financial Times 20 Jun 2000)

13

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## 2003-2008 SCO Threatens Linux & Sues Novell



The SCO Group, which acquired control of Unix intellectual property from Novell after it bought the rights from AT&T back in 1992, sent letters to Linux customers warning that commercial users may face legal liability for using Linux with a license from SCO. If SCO's tactic had been successful, it could have undermined one of the basic tenets of the open software movement, of which Linux has been the most successful example. Linux is a Unix derivative first developed in the 1990s, and has won a loyal following because of its low cost, reliability and ability to run on inexpensive computer hardware. Linux developer Linus Torvalds says he has not heard what parts of Linux might be infringing: "I'd dearly love to hear exactly "what" they think is infringing, but they haven't told anybody. Oh well. They seem to be more interested in FUD [fear, uncertainty and doubt] than anything else." The move followed a \$1-billion lawsuit filed by SCO in March 2003 against IBM, alleging IBM took parts of the Unix code and transferred them to Linux. IBM dismissed the lawsuit as unfounded. (based on AP story 14 May 2003)

-- SCO sued Novell in January 2004. In November 2008, the final judgement affirmed the July 2008 ruling against SCO in favor of Novell with an award of \$918,122 and a trust of \$625,486.90 + \$498 per diem after Aug 29, 2008.

14

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## 2004-01 Patently Absurd



A number of industry and government officials have come to the conclusion that the U.S. patent system has become absurd — especially in fields such as computers, software and biotechnology. Intellectual property attorney Mark Banner says: "Very bad patents are getting through. It's draining millions of dollars that could be spent on finding a better mousetrap." Yet the current system has its defenders. Jon Dudas of the Patent Office insists that most patents are valid, and Jay Walker (whose company patented the "reverse auction") argues: "We as a nation are ahead of the rest of the world because we have strong property rights. Everybody said you couldn't have patents on electricity. Guess what? They were wrong." Others in the debate take the position that the problem with the patent system is not that it's unfair but that it's irrelevant: software executive Jordan Greenhall says: "If you didn't have any patents at all, people would still be doing the same stuff because of the speed of the marketplace." (USA Today 13 Jan 2004)

15

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## 2006-03 JSA Attacks Electronic Money Transfers



### ANOTHER PATENT THREATENS CAMPUS TECHNOLOGY

Another company has contacted a number of colleges and universities about a technology patent they might be infringing, this time for systems that transfer money across the Internet to campus cards. In 1998, JSA Technologies applied for a patent, which was granted in 2005, that covers such transfers. Many institutions use campus cards for student expenses such as books, food in snack bars, or campus fees. Jon Gear, vice president of JSA, said the company has no intention of forcing institutions to discontinue their funds-transfer systems. The company, he said, is simply enforcing a patent that protects its intellectual property. Gear said JSA contacted a number of schools, though he declined to say how many or to name them, and will negotiate licensing fees, which he said would be "negligible." Lowell Adkins, executive director of the National Association of Campus Card Users, said his organization is working to clarify the issue. "It's still really unclear what the scope of the patent is," he said. "We need to understand how they're going to exercise their rights."

16

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## Reverse Engineering



- 2000-03 CyberPatrol Sues for CPHACK
- 2001 RIAA vs Ed Felton (1)
- 2001 RIAA vs Ed Felton (2)
- 2001 RIAA vs Ed Felton (3)
- 2006-04 EFF Evaluates DMCA

17

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## 2000-03 CyberPatrol Sues for CPHACK



Microsystems Software Inc. (Framingham, MA) filed a civil lawsuit in mid March 2000 against two software experts who reverse engineered their Cyber Patrol software. Eddy L. O. Jansson (thought to live in Sweden) and Matthew Skala (a graduate student in computer science at University of Victoria in British Columbia, Canada) posted a utility called "cphack" on the Web to allow kids to determine their parents' password for the program's administration functions and thus bypass Cyber Patrol filters. The software was instantly posted around the world, making it impossible to stop the spread of the anti-censorware regardless of what the authors do.

18

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## 2001 RIAA vs Ed Felton (1)

RECORDING INDUSTRY THREATENS RESEARCHER WITH LAWSUIT [24 Apr 2001]

The litigation department of the Recording Industry Association of America (RIAA) has threatened legal action against a Princeton University computer scientist if he and his colleagues give a conference presentation this week explaining how to get around a system developed by the industry to protect copyrighted music. The researcher, Dr. Edward W. Felton, works in the field of steganography, which develops techniques such as digital watermarking. The head of RIAA's litigation department insists: "There is a line that can get crossed, and if you go further than academic pursuit needs to go, you've crossed the line and it's bad for our entire community, not just for artists and content holders, it's everyone who loves art, and it's also bad for the scientific community." (New York Times 24 Apr 2001)

19

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## 2001 RIAA vs Ed Felton (2)

COMPUTER RESEARCHERS YIELD TO THREAT OF LITIGATION [27 Apr 2001]

A group of computer scientists at Princeton and Rice universities has decided to withdraw an academic paper that was to be presented at a conference this week, because the Recording Industry Association of America said that public presentation of the work would violate the Digital Millennium Copyright Act of 1998, because it would describe how to evade the systems used to protect copyrighted music. Princeton computer scientist Edward W. Felton explained the group's decision by saying: "Litigation is costly, time-consuming, and uncertain, regardless of the merits of the other side's case. We remain committed to free speech and to the value of scientific debate to our country and the world." John McHugh of Software Engineering Institute at Carnegie Mellon University commented: "This was an excellent technical paper. This was pure and simple intimidation. This paper didn't do anything that a bright technical person couldn't easily reproduce." (New York Times 27 Apr 2001)

20

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## 2001 RIAA vs Ed Felton (3)

COURT CASE TESTS ACADEMIC FREEDOM AND COPYRIGHT LAW [7 Jun 2001]

Princeton University computer scientist Edward W. Felton and colleagues at Princeton, Rice and Xerox, have asked a federal court for a declaratory judgment that would overturn a part of the 1998 Digital Millennium Copyright Act. The scientists say that the DMCA has constrained them from presenting their research results because the recording industry said the research, if made public, would undermine the industry's antipiracy technology, used to protect content on compact disks. Dr. Felton says that what is needed is "a broad principle that scientific investigation and publication is okay, that discussion of these technologies is okay. Publication is how scientists communicate with each other." (New York Times 7 Jun 2001)

21

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## 2006-04 EFF Evaluates DMCA

The Electronic Frontier Foundation (EFF) has issued a report detailing what it said are the unintended effects of the Digital Millennium Copyright Act (DMCA). The law was enacted seven years ago to address intellectual property issues that arose with the development of the Internet and other technologies. Among other provisions, the law includes a prohibition on circumventing antipiracy measures, even if such circumvention was done for reasons that reasonable people would see as legitimate, according to the EFF. In a number of cases, the DMCA has been invoked to suppress information obtained by researchers about security weaknesses. The EFF's report said that the law has been used not so much to limit piracy as to "threaten and sue legitimate consumers, scientists, publishers, and competitors." The Cato Institute recently released a report on the DMCA with similar findings.

22

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# DISCUSSION

23

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