Intellectual Property Law

• Intellectual Property as a whole
  An exclusive right to use your “property”
  Turns knowledge into property
  Does this mean that others can never use it?
  Example: UC won $0.5b in an infringement action against Microsoft.
    Patent struck down in preliminary re-examination
    Registration Systems versus Examination Systems

• Patents
• Copyrights
• Trade Secrets
• Sui Generis special laws

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Patents

• Our 1793 law follows England’s law, 1623

As we have seen, patents are money machines, abused by the crown prior to the patent act. The Act was designed to rein in the Crown.

• Basic unit of a patent is a “claim.”

• Subject matter: “things” “knowledge”
  machine, manufactured item, composition of matter, process

• What about products of nature? ideas? chemicals? mathematical algorithms? software?

• Requirements:
  Novel, nonobvious, reduced to practice
  Perpetual motion machines? Bioengineered organisms? Paper Cups?

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Breadth and Inventive Step

Noninfringing, Patentable

Infringing, unpatentable
Infringing, Patentable
Noninfringing, Unpatentable

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Patents

• Patented inventions must be disclosed. Why?
  Practical Reason: Rivals and courts must know what is claimed. Courts do not have to make it up afterwards. Facilitates follow-on innovation Puts technology in the public domain after expiration.
• Look at a patent: plant patent
  e.g., number 4 736 866 (now more than 7 million!)
• What are the claims? How do they function?
• Patents have “breadth”. What is it? Why have it?
• “Flash of Creative Genius” : Should this be required?
• Should patents be a registration system or an examination system?

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Patents: Special Laws

• Plants: Not subject matter of patents
  Plant Patent Act 1930 (asexually reproducing)
• PVPA 1974: Asexually reproducing plants saved seed? New hybrids?
• Semiconductor Chip Protection Act 1984 (actually part of the Copyright Act)
• European Database Directive 1996
Copyrights

• Subject matter: “works of authorship” (not what we would ordinarily call knowledge)
  (know it when we see it? Nope – statute contains a list)
• Constitution: “promote the useful arts”
  French tradition: Moral rights
  Example: variations on Mickey Mouse
• Copyright protects against *copying*
  Requires access (else it’s not copying)
  Relies on an idea/expression dichotomy
  Protects expression, not ideas.
• Bad Fits: Software, Databases, Music recordings?
• Google’s News links: Is that infringement? Fair use?
• The Open Source Movement: How does it work?
Copyright: Short history

• English Copyright law: 1710

Why did copyright not arrive earlier?
Before the printing press, authorship was cheap; copying was expensive. Easy to protect authors
After the printing press, copying is cheap, authorship is expensive. Hard to protect authors

• English history: Predecessor to copyright was exclusive publishing rights given by the Crown. A form of censorship, but it also protected against unauthorized copying.
Copyright: Details

• No standard of novelty or nonobviousness, but requires “minimal creativity”

• Fair use exemptions
  E.g., for parody, the exercise of free speech
  Single copies for personal use? Backup copies?

• Criminal penalties for copying are in the statute.

• Duration: much longer than patents (life plus 70 years, usually referred to as “forever”)

• Almost no breadth: Why not?
Trade Secrets

• Common law protection, growing out of the law of torts
• Does not protect against independent invention or reverse engineering
• Has potentially infinite duration
Trade Marks & Geographical Indications

• Registration system for trademarks
• Prevents products for which there is a “danger of confusion” with the trademark item.
• What is the social justification for this? One story is quality control.
• What about geographic indications?