Intellectual Property

An overview of Intellectual Property & Software Licenses

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I AM NOT A LAWYER, IF YOU HAVE REAL QUESTIONS.. GET A LAWYER!
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Copyrights offer protection for “original work of authorship” that is “fixed in any tangible medium of expression.”

E.g. literature, art, music

**Legal issues**

- Copyrights can be affixed by the author, and can be registered at the Copyright Office.

- Protection typically extends for the life of the creator + 75 years.

- Unlike patents, uniqueness is not an issue.

- Two or more authors can claim copyright protection for similar works, as long as they are both original.

- Originality means that the work was not already in the public domain.

- Patents provide protection to an idea. Copyrights provide protection to the expression of an idea, rather than the idea itself.
Copyrights (2)

Copyrights grant five basic rights:

1. The right to reproduce the protected work
2. The right to prepare derivative works from the protected work
3. The right to distribute copies
4. The right to perform literary, musical, dramatic, and choreographic works publicly
5. The right to display such works.

Limits to copyright protection

1. “Originality” only means that a work has not been copied. Independent creation of an identical work is legal.
2. Scope of protection varies with creative content of the material.
   * E.g. names, places, and events of non-fiction are not copyrightable.
3. Reproduction allowed for “fair use”
   * “Fair use” includes literary criticism, parody, and classroom teaching.

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Trademarks

A trademark, or "mark," is any word, phrase, symbol, design, sound, smell, color, product configuration, group of letters or numbers, or combination of these, adopted and used by a company to identify its products or services, and distinguish them from products and services made, sold, or provided by others.

Trademark violations are upheld when a likelihood of confusion is found.

• Provides orderly rules for marketing.
• Trademarks are registered with the USPTO.
• Trademarks must be distinctive.
  o E.g. cannot use “orange” to refer to a citrus product.
  o Cannot simply be descriptive (“pasteurized” milk cannot be registered as a trademark)
• Trademark violations are upheld when a likelihood of confusion is found.
Patents

Patents provide firms with temporary monopolies for their inventions. The tradeoff is that the inventor makes the information public.

Legal issues

- Patent protection extends from 20 years after the initial application. This is known as the priority date.

Patent protection is country specific. That is, US patents only have legal force in the US, even if the inventor is not American.

- To have protection in multiple countries, one must file applications in each country.
- Alternatively, one can file an application at the World Intellectual Property Office (WIPO) or European Patent Office (EPO) and designate the member states in which protection is desired.
Requirements for patent protection – The invention must be:

1. Novel – that is, the invention must be something new
2. Nonobvious – the invention must be a new contribution to knowledge
3. Useful – the invention must have some practical value.

A patent consists of a set of claims and a description of the invention

- Claims are technical descriptions of the process, machine, method, or matter contained in the application.
- Each claim must independently pass the tests stated above.
- It is possible for only some of the claims to be accepted.
- The description may be used by the examiner to establish context for the claims, but the claims are the main part of the patent.
Patents (3)

In the US, patent examiners follow a “first to invent” principle.

• That is, if two or more parties claim the same invention, the one that can show to have invented the product first wins the patent.
• In other countries, a “first to file” principle is used.

In my own experience patents take anywhere from 2 years to 5 years to be granted or rejected.

Not all claims are accepted, and there can be several back-and-forths between the applicant (and their lawyer) and the patent office's examiner.
Patents in Court

Enforcement of patents

• When a patent holder believes someone is infringing on the invention, they can take the defendant to court.
• In the US, all patent appeals from the US District Courts and the USPTO are held in the Court of Appeals of the Federal Circuit.

Enforcement raises questions of patent scope

• Patent scope refers to how broad a patent can be – that is, how close must an invention be to the patent to be considered infringement.
  o Broader scope makes patents more valuable to firms after the invention is complete, yet may lower incentives to do the R&D, since the likelihood of infringing on another patent is greater.
• Currently, the debate is over whether too many “obvious” inventions are patented.
• Doctrine of Equivalents – an invention that does not literally infringe upon a patent can still be found to infringe if the differences are insubstantial.
Trade Secrets

A trade secret is “any formula, pattern, device, or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.”

Trade secret law makes stealing a trade secret illegal.

- Trade secret laws are found in state, not federal, law.
- Varies across states.
- However, 16 states have enacted the Uniform Trade Secrets Act

The value of a trade secret depends solely on its commercial value.

It is, by definition, not made public, so disclosure for public benefit is not an issue.

*The formula for Coke is an example of a trade secret.*
Possible IP Reform

Lawrence Lessig recently argued before the Supreme Court in a case about copyright extensions. He argued that copyrights seem to be effectively indefinite since Congress keeps extending them. He lost.

Petty patents

• Petty patents are used for minor inventions. They receive shorter protection.
• Germany issues petty patents, but only gives protection for three years.

Software Patents

• Should we have them?
• Should they be different than regular Patents?
• The EU is currently engaged in deciding this issue.
Software Source Code Licenses

Most Software is NOT released in source code form. Commercial software is typically released for a very large fee in source form.. under NDA (non-disclosure agreement)

Open Source works differently...
The Open Source Definition is the result of a great deal of thought about what makes software ``open source'' or (in older terminology) ``free software''. Its constraints on licensing require that:

1. An unlimited right to copy be granted.
2. An unlimited right to redistribute be granted.
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Some OSLs are incompatible with the GPL

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The GPL is a strong license.. is it too strong for your software? Who is your audience?

What about the output of a GPL'd program

What about a scripted language? PHP is 'incompatible' with the GPL, so what does it mean to have a GPL'd PHP script???