Copyrights

• What is copyrightable?
  • “Original works of authorship fixed in a tangible medium of expression”
  • Copyright protects the “expression” of an idea
• Exclusive rights of copyright owner—Sect. 106
  • To reproduce; prepare derivative works; distribute copies; perform or display the work publicly; to perform sound recordings by digital audio.
• Length of copyright protection
  • Life of author plus 70 years (since 1978)
  • Often 95 years--“works for hire”

Copyright Coverage
• Registration of copyright
  • with U.S. Copyright office: http://www.copyright.gov/
  • not necessary to obtain a copyright
  • But necessary in order to bring lawsuit
• Downloading and copying of music/films
  • Songs and performances are copyrighted
  • Rights of composer and performer?
  • Napster case; iTunes
  • Ethical Issues

Other Issues
• The “Fair Use” doctrine
  • Allows some minor (“fair”) use of copyrighted work without permission of owner—limited cases
  • Apply 4-factor test to determine “fair use”
    • Purpose and character of the use
    • Nature of the copyrighted work
    • Amount and substantiality of portion used
    • Effect of the use on value of copyrighted work
  • Kinko’s case—one of the first fair use cases
  • How does “fair use” apply to internet/web?

International Issues
• The U.S. Copyright office states on its web page that there is no such thing as an "international copyright" that will automatically protect an author's writings throughout the entire world.
• Protection against unauthorized use in a particular country depends, basically, on the national laws of that country.
• However, most countries do offer protection to foreign works under certain conditions, and these conditions have been greatly simplified by international copyright treaties and conventions.

The Berne Convention
• This agreement, first signed in 1886, has been amended several times, and now has 172 member nations, including the United States. It assures that works copyrighted in one-member state will be given the same protection in each of the other contracting States as that nation grants to the works of its own nationals.
• The Convention includes a provision that all member nations will extend the terms of copyright protection to at least “life plus 50 years,” but may be longer.

Patents
• Federal law
• Inventions, processes, products
• Must be “novel, useful, and nonobvious”
• Owner has exclusive right to “make, use or sell” the patented item for 20 years
• The Patent Office compares the proposed patent with “prior art”
• Claimant must file a detailed list of “claims”
• Utility patents—last for 20 years
  • Biotechnology and gene patents
  • Computer software; business method patents
• Design patents—last for 14 years
  • Novel, original, ornamental designs
  • Recent Apple v. Samsung case deals with this
• Infringement
• Damages
  • Lost profits, infringer’s profits, reasonable royalties
• Injunctions

International Perspective
• Since business is now conducted on a global basis, patent protection around the world is important. Most nations have patent laws, and have a process for filing for patent protection, although they are not exactly the same everywhere. Several important international treaties attempt to achieve coordination regarding intellectual property.
• World Intellectual Property Organization (WIPO) now has 189 members
• WIPO administers many international IP Treaties, including the Berne Convention, the Paris Convention, the PCT, the Madrid Trademark System, and more.
The Paris Convention
- First concluded in 1883, now has been signed by 175 countries (including the United States)
- Provides that each member nation will establish a "grace period" for persons after they have filed for a patent or trademark in their home country.
- During that time—6 months for trademarks and one year for patents—the applicant will have the sole right to file the necessary applications to obtain patent protection in the other signatory nations.
- The applicant will, of course, have to properly meet the requirements in the second nation in order to obtain a patent.

The Patent Cooperation Treaty
- The Patent Cooperation Treaty (PCT) allows a patent applicant to file one application and seek an international patent—now 151 members.
- The application can be filed in the home country or with the World Intellectual Property Organization (WIPO).
- The application will be considered as a patent application in all member nations “designated” by the applicant.
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- The international patent application is not published for 18 months, which gives the applicant the opportunity to either withdraw the application or go forward and apply for national patents, before any publication.
- There are 151 members of the PCT, WIPO web site. www.wipo.int

European Patent
- There is also a European Patent Organization which has established a centralized patent grant system administered by the European Patent Office
- A European patent can be obtained by filing a single application in one of the official languages of the EPO (English, French or German) in a unitary procedure before the EPO and is valid in as many of the contracting states as the applicant cares to designate
- A European patent affords the same rights in the designated contracting states as a national patent granted in any of these states. There were 38 members of the EPO in January 2017 and another 5 nations recognize European patents. http://www.epo.org.
Intellectual Property
Michael Bixby

Trademarks
- What is a trademark? “A word, symbol or device...used to identify and distinguish one’s goods...and to indicate the source of the goods”
- Acquired by (1) Use; (2) Registration
- The federal Lanham Act
  - Registration and renewal
- The Madrid System—international protection thru WIPO—now 98 members
- Key infringement question: Is there a “likelihood of confusion?”
- Generic terms; secondary meaning; trademark dilution (blurring; tarnishment)
- Domain names and trademarks

Trade Secrets
- This is a common law theory
- Restatement of Torts definition (1939):
  - “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.”
  - “It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers...”

Factors use to determine existence of trade secrets
- Extent info is known outside the business
- Extent of protective measures taken
- Value of the information
- Amount of money or time spent to develop the information
- The ease of duplicating the information

Other Trade Secret Legal Issues
- Uniform Trade Secrets Act (UTSA)
  - Information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
  - UTSA has been adopted, in part, by 48 states—it is a state, not a federal law—cases heard in state courts
  - The UTSA provides protection against actual and also “threatened” misappropriation of a trade secret.
• the information must not be generally known, must have economic value, and must be kept confidential to maintain secrecy.
• Comments to the UTSA indicate that “proper means” to obtain information might include reverse engineering, observation in public use, or independent discovery

Other Issues
• Economic Espionage Act of 1996
  • Purposes of this federal law
  • Makes it a crime to intentionally steal or knowingly receive or purchase a wrongfully obtained trade secret
  • Severe Criminal Penalties
• The Defend Trade Secrets Act (2016)
  • New federal law protecting trade secrets
  • Creates a civil cause of action, and criminal penalties
  • Provides for various types of money damages
  • Also may allow for ex parte seizure of property
  • Immunity for employees reporting violations to officials
• The “inevitable disclosure” doctrine
• *PepsiCo v. Redmond* case

Creating and Protecting Trade Secrets
• Identify specific information as trade secret
• Keep it secret; mark it secret; control access to information to those who need to know
• Notification to employees, vendors of trade secret policy; restrict visitors; involve security
• Nondisclosure agreements (NDAs)
• Exit interviews with all departing employees

Conclusion
• Innovation and creativity are essential
• Intellectual property is the legal method of protecting your creations/innovations
• Today, IP represents the most valuable assets of many companies
• Be proactive to protect your IP—use NDAs, develop procedures to safeguard key IP assets, seek patents, protect copyrights and trademarks, guard trade secrets.