

# Intellectual Property

Lecture 14  
GSL Peru 2014

# US Intellectual Property Law

- Copyright
- Trademark
- Trade Secret
- Patent

# Copyright Scope

Section 102(a)

“Copyright protection subsists, in accordance with this title, in **original works of authorship fixed in any tangible medium of expression**, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.”



# Copyright - Scope

## Section 102 (a)

Works of authorship include the following categories:

- (1) literary works;
- (2) musical works, including any accompanying words;
- (3) dramatic works, including any accompanying music;
- (4) pantomimes and choreographic works;
- (5) pictorial, graphic, and sculptural works;
- (6) motion pictures and other audiovisual works;
- (7) sound recordings; and
- (8) architectural works.

# Copyright - Basic Requirement

- tangible medium of expression
- original work - does not have to be unique, novel or high quality
- express minimal creativity

# Copyright - Scope

Section 102(b)

**“In no case** does copyright protection for an original work of authorship extend to **any idea, procedure, process, system, method of operation, concept, principle, or discovery**, regardless of the form in which it is described, explained, illustrated, or embodied in such work.”



# Copyright - Derivative Works

## Section 103

(a) The subject matter of copyright as specified by section 102 includes compilations and derivative works, but protection for a work employing preexisting material in which copyright subsists does not extend to any part of the work in which such material has been used unlawfully.

(b) The copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material. The copyright in such work is independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection in the preexisting material.

# Copyright - Exclusive Rights

(1) to reproduce the copyrighted work in copies or phonorecords;

(2) to prepare derivative works based upon the copyrighted work;

(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

(4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;



# Copyright - Exclusive Rights cont

(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and

(6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

# Copyright - Fair Use

“Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as **criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research**, is not an infringement of copyright.”



# Copyright - Fair Use

Rule of Thumb - 10% of content

*CAMBRIDGE UNIVERSITY PRESS, et al v.  
MARK P. BECKER, et al., Defendants*

# Copyright - Software

Section 117(a) Making of additional copy or adaptation by owner of copy. Notwithstanding the provisions of section 106, it is not an infringement for the owner of a copy of a computer program to make or authorize the making of another copy or adaptation of that computer program provided:

(1) that such a new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner, or

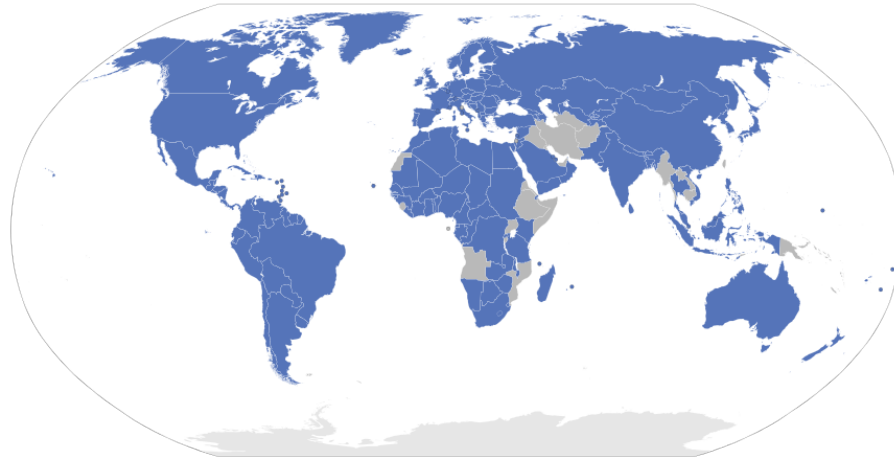
(2) that such new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful.

# Copyright - Duration

- After Jan 1, 1978, creation to life of author plus 70 years after death of author
- Anonymous - 95 years from first publication or 120 years from creation - which ever expires first

# Copyright

- Automatic at creation, no need to register
- Registering offers additional protection
- Global - Berne Convention



# Copyright - Summary

- Protects only from copying
- Does not protect from independent development
- Can be hard to prove infringement
- Low cost and easy to establish rights
- Global

# Trademark

“A trademark is a recognizable sign, design or expression which identifies products or services of a particular source from those of others. The trademark owner can be an individual, business organization, or any legal entity. A trademark may be located on a package, a label, a voucher or on the product itself. For the sake of corporate identity trademarks are also being displayed on company buildings.” - Wikipedia



# Trademark - symbols

TM

trademark symbol - unregistered



registered trademark

# Famous Trademarks



# Trademark - Summary

- Important for branding
- Does not protect product or technology
- Easy to establish rights
- Can last forever
- Global

# Trade Secret

“Any information, including any formula, pattern, compilation, program, device, method techniques or process that provides a business with a competitive advantage from *not being generally known* by a company’s current or potential competitors or *readily discoverable* by them through legitimate means, and is the subject of reasonable effort to maintain its secrecy.” - Entrepreneur’s Guide to Business Law

# What can be a Trade Secret?

Anything that falls under the definition

- Sales and Marketing plan
- Sales data
- Customer data and list
- Software design and program

# Maintain Trade Secret

A reasonable effort must be made to maintain secrecy. Need clear process and procedures.

- Nondisclosure Agreements
- Non-compete Agreements
- Employee Education
- Active Protection
  - Mark documents “Confidential and Proprietary”
  - Restrict access
  - Avoid disclosure
  - Keep logs

# Trade Secret - Summary

- Similar law available abroad
- Does not protect product or technology
- Others can have same trade secret
- Only protect secrecy/disclosure
- Can last forever, but protection lost when secrecy is revealed
- Low cost to establish, however high labor to maintain

# Patents

- An exclusive right given to an inventor or an assignee by a particular country for a limited time in exchange for full disclosure of their respective writing or discovery.
- A right to **exclude** others from making, using or selling:
  - an invention
  - in a given country that granted the patent
  - for a limited time



# Patents - Types

- Plant
- Design
- Utility

Most countries have Utility and Design. Many also have Utility Model patents.

# Patent - Plant

Rights granted to the breeder of a new variety of plant that give the breeder exclusive control over the propagating material (including seed, cuttings, divisions, tissue culture) and harvested material (cut flowers, fruit, foliage) of a new variety for a number of years.

Example:

Gold Medal® - Grandiflora



# Patent - Design

Ornamental design for an object having practical utility. (Industrial Design Rights)

Example:

- Jewelry, furniture, container design
- Computer icons
- Apple v. Samsung - iPhone design

# Patent - Utility Model

Not in the US.

Similar to Utility patent, but geared toward “incremental” inventions. Also known as “petty patents”, “innovation patents”, “minor patents”, and “small patents”.



# Patent - Utility

- The invention has to be “useful” - US
- In EU, utility is not the criterion, but industrial applicability

# What's Patenable?

- **US** Section 101 - Whoever invents or discovers any new and useful [i] process, [ii] machine, [iii] manufacture or [iv] composition of matter...
- **Europe** – “any inventions, in all fields of technology, providing they are new, involve an inventive step, and are susceptible of industrial application.”
- **Japan** – industrially applicable, novel, inventive, does not harm public order, morality or public health

# Patenting Criteria

- Useful - Section 101
- Novelty - Sections 101,102
- Non-obvious - Section 103

# Utility Criterion

- Operability - requirement disputed
- Beneficial Utility - “useful” and not “frivolous”
- Practical Utility - “real world use”



# Novel Criterion - “New”

Invention **cannot** be patented if:

- The **invention was known** or used by others in the United States before the patent applicant invented it.
- The **invention was patented** or described in any printed publication, before the patent applicant invented it.
- The invention was patented or described in a printed publication in any country more than **one year prior** to the inventor's U.S. patent application.
- The **invention was in public use or on sale** in the United States more than one year prior to the inventor's U.S. patent application.

# Non-obvious Criterion

A person having ordinary skill in the area of technology related to the invention would not find it obvious to make the change.

# References

- Entrepreneur's Guide to Business Law - Constance E. Bagley and Craig E. Dauchy
- Basic Business Law for the Entrepreneur and Manager - John Akula
- Law and Cutting-Edge Technologies - John Akula and James B. Lampert