Intellectual Property in the Digital Age

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Basics

- What is intellectual property?
- What are some examples of digital intellectual property?
- Why do we care about it?
- What are the different types of intellectual property and what protections do they afford?
- When can and can't we use things other people created?
Intellectual Property (IP)

- Any unique product of the human intellect that has commercial or artistic value (books, songs, inventions, chemical formulas, computer programs, etc)
- Fixed expression of idea
- Legal monopoly
- Encourages innovation through profit
Digital IP

- Works that can be created, experienced, or altered solely through electronic means
Why Do We Care?

- Digital mediums allow **perfect copies** and **easy distribution**.
- You may need to use work you didn’t create
  - Graphic art for a company presentation
  - Photo for press release
  - Soundtrack for a slideshow at your wedding
- You may create some work which you would like to profit from
  - Blog posts
  - Digital art
IP Protection Methods

1) Trademarks
   - Band-Aid®
   - “Just Google it.”

2) Trade secrets
   - Coke formula

3) Patents
   - Time limited period of exclusive use
   - Public Disclosure
   - 20 years
4) Copyright

- Set of exclusive rights granted to creator
  - Right to copy work
  - Right to distribute work/copies
  - Right to perform work
  - Right to display work
  - Right to derivative works (screenplay adaptation of a book)

- Others have to pay you royalties to use your work.
- Does not have to be explicitly claimed.
Software as IP

- What about a program you write?
- What about a website you make?
- Can those be protected from unauthorized use?
  - Yes. Fixed expression of idea.
  - Automatically granted copyright.
  - Software patents are very controversial.
Copyright Limits

- Time limited (sort of)
  - 1790: 28 years
  - 1831: 42 years
  - 1909: 56 years
  - 1976: 75 years
  - 1998: 95 years or 70 years after author's death (whichever is earlier)
    - Bono Copyright Term Extension Act or “Mickey Mouse Act”

- Once copyright expires, work becomes “public domain”
Fun Fact

- “Happy Birthday” © 1935
- Hill sisters and Clayton S. Summy (company)
- Sold to Time-Warner in 1998
- Collects $2M/yr from public performances
- Will remain copyrighted until 2030
- Copyrighted under “work for hire” designation which has slightly different time limits
But…

- We sing “Happy Birthday” all the time. Do we have to pay royalties?
- What about if we use “Happy Birthday” in a YouTube movie we post?
- What are the distinctions? When can or can’t we use something someone else created?
Fair Use

- Tempers exclusive rights of copyright holder
- Codified in US Copyright Act of 1976
- Derived from classic court case *Fulsom v. March* in 1841
  - Defendant copied 343 pages from plaintiff's 12 volume (!) biography of George Washington
  - Used in separate 2 volume work
Fair Use Principles

1) Monetary Impact of Use
   - Commercial Use
   - Does use degrade original value

2) Amount of Use

3) Purpose of Use
   - Transformative vs. Derivative
   - Educational use, news, parody, etc.

4) Nature of Work
   - Fictional vs. nonfictional
   - Facts can’t be copyrighted
   - Social usefulness of work (Zapruder film)
An example...
What did you notice?

* Indiana Jones and the Last Crusade
* Garfield
* Vin Diesel in The Chronicles of Riddick
* Brad Pitt in Troy
* Hugh Jackman in X-Men
Movies Used:

- 10,000BC
- Masters of Universe
- Indiana Jones and the Last Crusade
- Lord of The Rings: Return of the King
- Farscape: The Peacekeeper Wars,
- Chronicles of Riddick
- Pitch Black
- X2: X-men United
- X-men:The Last Stand
- Troy
- Star Trek6:The Undiscovered Country,
- Space Hunter: Adventures in the Forbidden Zone
- Stargate
- Mighty Morphin Power Rangers
- Garfield
- Enemy Mine
- Spykids
- Underworld
- The Mummy
- The Mummy Returns
- Galaxy Quest
- John Carpenter’s Ghosts of Mars
- Planet of the Apes
- Aliens
- Mortal Kombat: Annihilation
- Reign of Fire
- Mad Max Beyond Thunderdome
Fair Use or Not?

1) Monetary Impact of Use?

2) Amount of Use?

3) Purpose of Use?

4) Nature of Work?
Another Example: Professor’s class notes as IP

- Prof. Moulton at UF teaches a course “Wildlife Issues in the New Millennium.” He wants to publish an e-textbook on the course.
- Notetaking company, “Einstein’s Notes,” pays a student to take notes in class, repackages them along with material such as old exams, and sells them as “study guides”
- Prof. Moulton and his publisher sue Einstein’s notes alleging copyright infringement
- Fair use or not?
Fair Use or Not?

1) Monetary Impact of Use?

2) Amount of Use?

3) Purpose of Use?

4) Nature of Work?
Review

- Define “intellectual property,” “copyright creep,” “fair use”
- Define the different methods of protecting IP & distinguish amongst them
- List rights granted creator under copyright
- List 4 deciding factors of determining fair use
- Apply tests of fair use to given scenario