

## Chapter 4

Intellectual Property

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### Disclaimer

- THIS IS NOT LEGAL ADVICE. You should not rely on anything I say here to guide you in any specific situation. If you are faced with a legal problem, you should seek advice from a competent attorney. Intellectual property problems can be complex and should be discussed fully with a competent and qualified attorney who represents YOU.

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**Overview**

- Introduction
- Intellectual property rights
- Protecting intellectual property

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**Introduction**

- Digital music storage + Internet → crisis
- Value of intellectual properties much greater than value of media
  - Creating first copy is costly
  - Duplicates cost almost nothing
- Illegal copying pervasive
- In light of information technology, how should we treat intellectual property?

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**Intellectual Property Rights**

- What is intellectual property?
- Property rights
- Extending the argument to intellectual property
- Benefits of intellectual property protection
- Limits to intellectual property protection

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### The Law of Property

- Property is NOT any object in and of itself.
- Something becomes property because of the legal rights that attach to it.
- Bundle o' Rights

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### Some General Property Rights:

- The right to use your property
- The right to exclude others from using your property
- The right to to give permission to others to use your property, in whole or in part.
- The right to create other property from existing property

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### The Key to Property Law

- Exercise of Dominion
  - Who has the right to control the property?
  - Means
    - Who controls the rights?

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### Where Does the Notion of Property Come From?

- English common law
  
- William the Conqueror
  - Brought the feudal system to England in 1066

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### Tangible Property

- Real Property
  - Real Estate
  - “Real” because it was the only type of property recognized in feudal England
- Personal Property
  - Mere chattels or possessions – originally virtually valueless

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### Property Rights

- Locke: *The Second Treatise of Government*
- People have a right...
  - to property in their own person
  - to their own labor
  - to things which they remove from Nature through their labor
- As long as...
  - no person claims more property than he or she can use
  - after someone removes something from common state, there is plenty left over

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### Intangible Property

- Property not comprised of a tangible object
- Intellectual Property
- New Property Types

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### Where does Intellectual Property Come from?

- U.S. Constitution
- Article I, section 8, clause 8
  - The Congress shall have the Power . . . To Promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

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### Limits to Intellectual Property Protection

- Giving creators rights to their inventions stimulates creativity
- Society benefits most when inventions in public domain
- Congress has struck compromise by giving authors and inventors rights for a limited time

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**Protecting Intellectual Property**

- Trade secrets
- Trademarks and service marks
- Patents
- Copyrights

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**Trade Secret**

- Confidential piece of intellectual property that gives company a competitive advantage
- Never expires
- Not appropriate for all intellectual properties
- Reverse engineering allowed
- May be compromised when employees leave firm

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**Trademark, Service Mark**

- Trademark: Identifies goods
- Service mark: Identifies services
- Allows a company to establish a “brand name”
- Does not expire
- If brand name becomes common noun, trademark may be lost

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## Patent

- A public document that provides detailed description of invention
- Provides owner with exclusive right to the invention
- Owner can prevent others from making, using, or selling invention for 20 years

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## Copyright

- Provides owner of an original work five rights
  - Reproduction
  - Distribution
  - Public display
  - Public performance
  - Production of derivative works
- Copyright-related industries represent 5% of U.S. gross domestic product
- Copyright protection has expanded greatly since 1790

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