Day 10

Betamax
Atari v. Nintendo
DRM
DMCA

Napster
Aereo
Look and Feel
SOPA
Open Source
Supreme Court decided that the makers of a device with legitimate uses should not be penalized because some people may use it to infringe on copyright.

- Copying movies for later viewing was fair use.
- Arguments against fair use:
  - People copied the entire work.
  - Movies are creative, not factual.
Why Sony Won:

0 Arguments for fair use
  0 The copy was for private, noncommercial use and generally was not kept after viewing
  0 The movie studios could not demonstrate that they suffered any harm
  0 The studios had received a substantial fee for broadcasting movies on TV, and the fee depends on having a large audience who view for free
More Significant Cases

Reverse engineering: game machines

0 Sega Enterprises Ltd. v. Accolade Inc. (1992)
0 Atari Games v. Nintendo (1992)
  0 Nintendo won – physical system infringement/licensing violation
0 Sony Computer Entertainment, Inc. v. Connectix Corporation (2000)
  0 Software to allow playstation games to be played on macs.
  0 Settled out of court after Connectix won on the “fair use” front.
0 Courts ruled that reverse engineering does not violate copyright if the intention is to make new creative works (video games), not copy the original work (the game systems)
Response to Infringement

Digital Rights Management (DRM)

- Collection of techniques that control uses of intellectual property in digital formats.
- Includes hardware and software schemes using encryption.
- The producer of a file has flexibility to specify what a user may do with it.
- Apple, Microsoft and Sony all use different schemes of DRM.
Response to Infringement

THE DIGITAL MILLENNIUM COPYRIGHT ACT (DMCA) 1998

0 Anti-circumvention
  0 Prohibit circumventing DRM

0 Safe harbor
  0 Protect Web sites from lawsuits for copyright infringement by users of site (extended Telecommunications Act protections with the condition that providers abide by take-down notices.)
From The Simpsons, http://media.tumblr.com/353266c1f3b8cac4d4ea1e293406f3bf/tumblr_inline_nhnws2Rq6V1r79k32.gif
Submitting a DMCA takedown notice to Google

By ticking the following boxes, I state that:

- I have a good faith belief that the use of the material in the manner complained of is not authorised by the copyright owner, its agent or the law;
- This notification is accurate; and
- UNDER PENALTY OF PERJURY, I am authorised to act on behalf of the owner of an exclusive right that is allegedly infringed.
- I acknowledge that under Section 512(f) of the DMCA, any person who knowingly materially misrepresents that material or activity is infringing may be subject to liability for damages.
- I understand that abuse of this tool will result in termination of my YouTube account.

Typing your full name in this box will act as your digital signature.

Submit Complaint

https://www.youtube.com/copyright_complaint_form
Industry issues "take down" notices per the DMCA

As long as sites like YouTube, google, and ebay comply with take down notices they are not in violation

Take down notices may violate fair use, some have been issued against small portions of video being used for educational purposes – but are still abided by
Google Is Now Getting 1,000,000 Takedown Requests a Day...

Requests Over Time

The graph below shows the volume of requests to remove or delist content due to alleged copyright infringement since July 2012. We push back on these requests when they fail to include the necessary information or we suspect they are fraudulent.

http://www.digitalmusicnews.com/2014/05/06/googledmca/
In response to a complaint we received under the US Digital Millennium Copyright Act, we have removed 1 result(s) from this page. If you wish, you may read the DMCA complaint that caused the removal(s) at ChillingEffects.org.

In response to a complaint we received under the US Digital Millennium Copyright Act, we have removed 1 result(s) from this page. If you wish, you may read the DMCA complaint that caused the removal(s) at ChillingEffects.org.

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DEC. 7, 1999: RIAA SUES NAPSTER

1999: The Recording Industry Association of America sues Napster, the online, peer-to-peer file sharing service that’s allowing millions of computer users to score free, copyright music. The rules are about to change.

Napster founder Shawn Fanning won rock-star celebrity with the service. But music-industry heads were spinning.
Napster's arguments

0 It was the same as a search engine, which is protected under the DMCA (1998) and Telecommunications Act (1996)
0 They did not store any of the MP3 files
0 Their technology had substantial legitimate uses
0 The Sony decision allowed for entertainment use to be considered fair use
0 Did not hurt industry sales because users sampled the music on Napster and bought the CD if they liked it
RIAA's arguments

Companies are required to make an effort to prevent copyright violations and Napster did not take sufficient steps.

RIAA sent takedown notices (Madonna, Metallica, Dr. Dre) and they were ignored.

"Personal" meant very limited use, not trading with thousands of strangers.

Songs and music are creative works and users were copying whole songs.

Claimed Napster severely hurt sales.
The decision:

0 Napster was promoting itself as a music service (went against legitimate use claim)
0 Did not abide by take down notices
0 Napster was not a device or new technology and the RIAA was not seeking to ban the technology

Court ruled Napster **liable** because **they had the right and ability to supervise the system**, including copyright infringing activities
More cases

0 File sharing: **MGM v. Grokster (2005)**

- Grokster, Gnutella, Morpheus, Kazaa, and others provided peer-to-peer **(P2P) file sharing services**
  - The companies did not provide a central service or lists of songs

0 Lower Courts ruled that **P2P does have legitimate uses**

0 Supreme Court ruled that intellectual property owners could sue the companies for encouraging copyright infringement

Textbook p. 194
More cases

Why can’t public TV be streamed on computers?

20th century Fox, Univision, PBS vs. Aereo

Went all the way to Supreme Court, which cited the Transmit Clause from the 1976 Copyright Act, which says that:

it’s a breach of copyright “to transmit or otherwise communicate a performance or display of the work...to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.”
Look & Feel

- Refers to interface features
  - pull-down menus, windows, icons, and finger movements and specific ways they are used to select or initiate actions.
- Reflects major creative effort by programmers.
- Generally not protected by copyright
- Method of operation, not design
  - Notable exception: Apple v Samsung
Samsung told to stop copying iPhone

By David Goldman  @DavidGoldman

CNN Money (original suit filed 2012)
The ruling reverses a May 2014 verdict from a federal court in San Jose, California ordering Samsung to pay $119.6 million for using Apple's patented technology without permission.

Infringement of the quick links feature, which allows the device to recognise data on the touchscreen, such as a phone number, and link to it to make a call, accounted for nearly $99 million of the damages.

While the appeals court said that Samsung did not use the same technology to detect and link to specific data, it also said Apple's other patents were obvious compared to previously known inventions and should never have been granted.
Update 10/2016

Supreme Court hears Apple-Samsung patent dispute

October 15, 2016 by Maggie Baldridge

High court to decide if a company can be required to pay all profits on products that infringe a patented design

Apple v. Samsung legal battle goes back to its roots

A federal appeals court says it's up to a district court to decide if there should be a damages retrial in the long-running patent case.
International Piracy

Some countries do not recognize or protect intellectual property

Many countries that have a high amount of piracy are exporting the pirated copies to countries with strict copyright laws

Economic sanctions often penalize legitimate businesses, not those they seek to target
Unlicensed Rate

= 

Unlicensed Software Units/
Total Software Units Installed

# PCs Getting Software 
\times 
Software Units per PC 

= 
Total Software Units Installed

http://chartsbin.com/view/1186
The DMCA vs. Fair Use, Freedom of Speech, and Innovation

Lawsuits have been filed to ban new technologies

U.S. courts have banned technologies such as DeCSS (decryption software) even though it has legitimate uses, while courts in other countries have not.

Protesters published the code as part of creative works (in haiku, songs, short movies, a computer game and art)

U.S. courts eventually allowed publishing of DeCSS (Bernstein v. US, 1996 → code is speech) but prohibited manufacturers of DVD players from including it in their products
Evolving Business Models

0 Organizations set up to collect and distribute royalty fees (e.g. the Copyright Clearance Center), users don't have to search out individual copyright holders

0 Sites such as iTunes and the new Napster provide legal means for obtaining inexpensive music and generate revenue for the industry and artists

0 Revenue sharing allows content-sharing sites to enable the posting of content and share their ad revenues with content owners in compensation
What doesn’t work

0 Pirate Bay
  0 Founders under arrest
  0 Don’t abide by take-down notices

0 Megaupload
  0 Shut down by US DOJ
  0 Jurisdiction?
March 17, 2006

Honorable Dan Eliasson
March 17, 2006

Via Facsimile (+46 8 405 36 01) & Mail

The Honorable Dan Eliasson
State Secretary
Ministry of Justice
Rosenbad 4
103 33 Stockholm
Sweden

Re: The Pirate Bay

Dear State Secretary:

As you will recall, on October 12, 2005, you were kind enough to meet with me, at which time I relayed my concern that Sweden appears to have become an international piracy haven. We discussed at some length an organization operating in Sweden called The Pirate Bay, probably the world’s most prominent BitTorrent torrent-tracker site specializing in the unlawful distribution of copyrighted material.

At that time, thepiratebay.com boasted that it hosted 102,000 torrent files (links to infringing material) and approximately 1,620,000 users. Not only has The Pirate Bay continued in operation, it has grown, claiming to host 134,000 torrent files with over 1,900,000 users.

I have taken the liberty of attaching two articles that appeared recently about The Pirate Bay. The first, which appeared in Wired magazine, a leading popular journal on digital issues. The article chronicles in depressing detail the level of disrespect for intellectual property in Sweden.

After citing the Motion Picture Association’s efforts to educate people around the world about the consequences of piracy, the article quotes one of the operators of The Pirate Bay:

“We’re also into educating people about the consequences of piracy.” Pirate Bay operator Brokep shot back in an e-mail. “We’re teaching them how to do it.”

The second article, which appeared at Slyck.com (“ThePirateBay to Cash In”), in which the winner of a popular local game show called “The Top Contestant” pledged to donate 20% of his winnings to The Pirate Bay, attesting to how widespread contempt for intellectual property rights appears to have grown in Sweden.

Clearly the complaints that we filed on behalf of our members in 2004 and 2005 with the police in Stockholm and Gothenburg against the operators of The Pirate Bay have resulted in no action. As I am sure you are aware, the American Embassy has sent entreaties to the Swedish government urging it to take action against The Pirate Bay and other organizations operating within Sweden that facilitate copyright theft. As we discussed during our meeting, it is certainly not in Sweden’s best interests to earn a reputation among other nations and trading partners as a place where utter lawlessness with respect to intellectual property rights is tolerated; I would urge you once again to exercise your influence to urge law enforcement authorities in Sweden to take much-needed action against The Pirate Bay.

Please do not hesitate to contact me if you have any questions or concerns that you would like to discuss.

With best professional regards. I remain,

Sincerely Yours,

John G. Malcolm

Enclosures

cc: Hon. Dan Glickman, Chairman & CEO, Motion Picture Association
    Chris Marcich, Senior Vice President & MPA Regional Director, EMEA Region
    Ingrid Kollist, Economic Counselor, US Embassy Stockholm
Kim Dotcom 60 mins
Kim Dotcom cont’d

How The US Government Legally Stole Millions From Kim Dotcom
from the the-fun-of-asset-forfeiture dept

I never lived there
I never traveled there
I had no company there

But all I worked for now belongs to the U.S.

I should have invaded a country based on
lies or caused a global financial crisis or spied
on all of you. Cloud storage was a bad idea.

Megaupload founder Kim Dotcom can be extradited to the U.S., New Zealand court says

Techdirt, twitter, yahoo news
SOPA

0 “Stop Online Piracy Act” – late 2011.
0 Made each website owner responsible for any potentially criminal activity
0 If site was deemed untrustworthy, could be taken down (blocked by ISP, removed from Google results) without due process
0 Clear(?) violation of Safe Harbor protections in DMCA
0 Blocked after “black out” and public outcry.

Google Rips MPAA For Allegedly Leveraging Local Government To Revive SOPA

Posted Dec 18, 2014 by Alex Wilhelm (@aiex)

https://techcrunch.com/2014/12/18/google-rips-mpaa-for-allegedly-leveraging-local-government-to-revive-sopa/
Search engine thumbnail: fair use?

0 Caching and displaying small excerpts is fair use
0 Creating and displaying thumbnail images is fair use
0 Google negotiated **licensing agreements with news services** to copy and display headlines, excerpts, and photos.
Books Online

0 Project Guttenberg digitizes books in the public domain
0 Microsoft scanned millions of public domain books in University of California's library
0 Google has scanned millions of books that are in the public domain and that are not; they display only excerpts from those still copyrighted
0 Some court rulings favor search engines and information access; some favor content producers
Public Domain

When copyright protection expires, works enter the public domain.

As a general rule, for works created after January 1, 1978, copyright protection lasts for the life of the author plus an additional 70 years. For an anonymous work, a pseudonymous work, or a work made for hire, the copyright endures for a term of 95 years from the year of its first publication or a term of 120 years from the year of its creation, whichever expires first.

What is in the public domain now?

Tools for authorized sharing

Creative Commons: Enables an author to specify permissions
Update: TPP

Trans Pacific Partnership
Signed 2/4/2016; not yet ratified (enacted)
Has extensive provisions to change current IP laws
Would make US law stricter
Would bind signatory countries to these new provisions
  U.S., Japan, Australia, Peru, Malaysia, Vietnam, New Zealand, Chile, Singapore, Canada, Mexico, Brunei Darussalam
Update 1/2017: rejected by Trump

https://www.eff.org/issues/tpp
Free Software

What is free software?
0 Free software is an idea advocated and supported by a large, loose-knit group of computer programmers who allow people to copy, use, and modify their software
0 Free means freedom of use, not necessarily lack of cost

Open source - software distributed or made public in source code (readable and modifiable)
GNU and copyleft

**GNU project**

0 Began with a UNIX-like operating system, a sophisticated text editor, and many compilers and utilities

0 Now has hundreds of programs freely available and thousands of software packages available as free software (with modifiable source code)

0 Developed the concept of *copyleft*:

  0 the developer copyrights the program and releases it under an agreement that allows people to use, modify, and distribute it, or any program developed from it, **but only if they apply the same agreement to the new work**. No one may develop a new program from a copylefted program and add restrictions that limit its use and free distribution. Courts have said a person can sue for an injunction against someone who uses copylefted software without following the open source licensing agreement.

Textbook p211
Patents

Patents protect inventions by giving the inventor a monopoly for a specified time period.

Laws of nature and mathematical formulas cannot be patented.

Obvious inventions or methods cannot be patented.
Patents

A few cases
0 Paul Allen, co-founder of Microsoft, and e-commerce and Web-viewing
0 Apple, Android, and tap-touch screens (see slide 18)
0 IBM, Amazon, and electronic catalogues
Some companies accumulate thousands of technology patents but do not make any products. They license the patents to others and collect fees.

NRF takes ‘patent troll’ fight to Congress

February 25, 2016 | BY DAN BERTHIAUME

The National Retail Federation (NRF) is officially calling on Congress to pass patent reform legislation that would put an end to “shakedown settlements” forced on retailers by “patent trolls.” Patent trolls are companies that purchase often-obscure patents for technology they did not invent, then demand licensing fees from retailers and other businesses that may not realize the technology is patented.

According to the NRF, trolls usually lose in court, but court costs are so high that they often end up effectively blackmailing a retailer into settlement.

The troll attacks businesses using an arsenal of attorneys and vague software patents.

It has an immunity to patent lawsuits because it makes no products.

PATENT TROLL
Nonpracticing Entity
(It doesn't actually make anything)

The troll's primary weapon is the threat of massive legal fees.
Should patents exist?

In favor of software patents
- Reward inventors for their creative work
- Encourage inventors to disclose their inventions so others can build upon them
- Encourage innovation

Against software patents
- Patents can stifle innovation, rather than encourage it.
- Cost of lawyers to research patents and risk of being sued discourage small companies from attempting to develop and market new innovations.
- It is difficult to determine what is truly original and distinguish a patentable innovation from one that is not.
- Many computer scientists see all algorithms as mathematical formulas.