

Release the Hounds!

The Evolution of Copyright Law in the Information Age

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Data

■ Data

- Information

- Knowledge

- Wisdom

■ Internet = “The Three Ds”

- Data

- Digitize

- Distribute





Intellectual Property (IP)

- Laws designed to protect intangible property created by intellectual exercise
- Rationale: to stimulate creativity without unduly displacing the benefits that normally flow from free competition
- Tension
- Purpose : to promote data cretion by individuals (with copyright and patent) so that society benefits
- U.S. Congress has increased IP Protection
 - American Inventors Protection Act
 - AntiCybersquatting Consumer Protection Act
 - Sonny Bono
 - Digital Millennium Copyright Act
 - Economic Espionage Act 1996
- Four Legal Foundations for Intellectual Property
 - Patent
 - Trade Secrets
 - Copyrigt
 - Trademark

Copyrights

- Copyright law governs the right to control copying of certain works
- To qualify for copyright protection, the work must be an original work of authorship fixed in a tangible medium of expression
- Copyright protection is available only for the expression of an idea, i.e. the “work”, and does not extend to the idea itself or any procedure, process, system, method of operation, concept, principle, or discovery
- Copyright protection exists automatically once the work is fixed in a tangible medium of expression—no filing required
- Copyright protection for works created after January 1, 1978, lasts for 70 years after the author’s death
- After this time period, work returns to public domain

Copyrights

- Internet causes substantial change in way works may be copied, decreasing cost and increasing quality
- Copyright monopoly is as much about distribution as creation
- So time is near when Copyrights wont be meaningful in terms of ensuring distribution— Copyrights will be predominantly about content
- Competing Views
 - Copyright needs to be strengthened
 - Copyright losing importance

Copyrights and the Internet

■ Fair Use Exception Test

- Purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- Nature of the copyrighted work;
- Amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- **Effect of the use upon the potential market** for or value of the copyrighted work.

■ Illegal Downloads

- Music and Videos

■ Improper Copying

- Texts
- Images

Hyperlinking

- Cross-reference appearing on one Web page that, when activated, brings up another Web page
 - Text, such as the Internet address (“URL”) of the web page being called up
 - Word or phrase that identifies the web page being called up
 - Image
- The code for the web page containing the hyperlink contains a computer instruction that associates the link with the URL of the web page to be accessed so that clicking on the hyperlink instructs the computer to enter the URL of the desired web page and thereby access the page
- Tremendous benefit to the user, allowing for efficient access to desired information

Hyperlinking

- Trade Tent Analogy
- Copyright Issues
 - Top level Web page
 - Little likelihood of confusion exists
 - “Deep hyperlink”
 - more likely to cause confusion
- Link to a site you reasonably know has unauthorized work
 - Contributory infringement

Open Source

- Copyright Duration
- Ubiquity of the Internet
- The convergence of these two concepts—the open source movement.
- The basic concept of open source is that a copyright is not obtained to protect the author's legal interest; rather, the work is given to the public under a less restrictive license.
 - The projects undertaken in the open source model are often quite extensive, finding themselves to the distributive nature of the Internet.

The resources required to complete such a task are distributed to volunteers who freely perform the work on a particular project which is then maintained in a central location.

■ Open Source Examples

- Software
- Encyclopedia
- Education
 - MIT OpenCourseWare

Open Source Movement

■ Critical Factors

- Duration of Legal Protection
- Ubiquity of Net

■ Software

- Linux

■ Copyleft

- Work given to public under less extensive license
- Key: subsequent modifiers must adopt same or similar license

“Patent Data” Movement

■ Patent Definition

- the exclusive right granted by a government to an inventor to manufacture, use, or sell an invention for a certain number of years
- OR
- readily open to notice or observation; evident; obvious

■ Open Source vs. Patent Data

- Computer Code vs. Data

■ Principles

- Transparency
- Post Involvement Verification
- Low Cost
- Legal Structure
- Common Standards
- Peer Review
- Common Goal
- Incrementalism
- Non-Monetary Incentives
- Leadership

Patent Data Examples

- Wikipedia
- RateMyProfessors
- MIT OpenCourseWare
- OpenOffice
- Google Maps—mashups
- OSCar
- Firefox Browser
- Open Cola
- Music
- Movies
- Museum
- Genetics
- Business Models