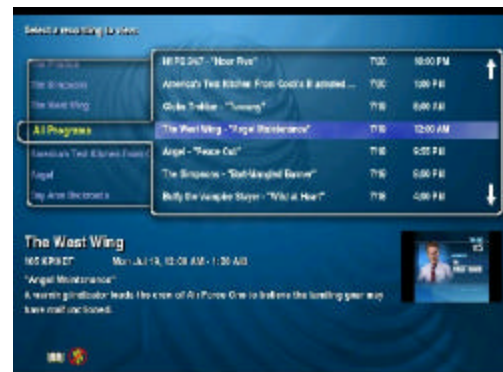


Even more content protection

Broadcast Flag

- "Digital Broadcast Content Protection" 47 CFR 73.9002(b) and following:
- "No party shall sell or distribute in interstate commerce a Covered Demodulator Product that does not comply with the Demodulator Compliance Requirements and Demodulator Robustness Requirements."
- Struck down as exceeding FCC jurisdiction



- [West Wing, last Sunday](#)
- Broadcast Flag Authorization Act, hearing Thursday
- also, Analog Content Protection Act; HD Radio Content Protection Act

Code finer-grained than law

- Code can prevent uses law couldn't practically reach (even if earlier law technically prohibited them)
- This preemptive power stops many potential fair use challenges, preventing judicial review of whether a use is fair or foul

Laws of content protection

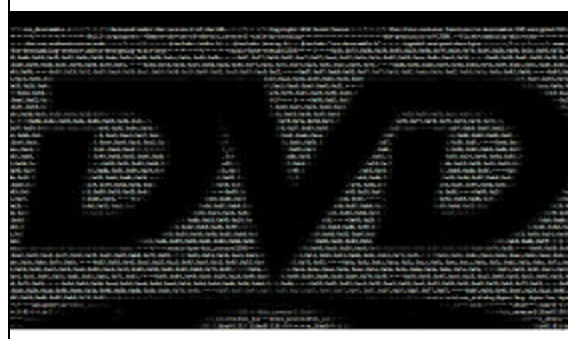
- Federal law
 - Copyright
 - Trademark
 - Patent
 - Computer crime
- State law
 - Trade secret
 - Tort (trespass to chattels)
 - Contract

Trade Secret

- "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:
 - (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and
 - (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

- (2) "Misappropriation" means:
 - (i) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
 - (ii) disclosure or use of a trade secret of another without express or implied consent by a person who
 - (A) used improper means to acquire knowledge of the trade secret; or
 - (B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was
 - (i) derived from or through a person who had utilized improper means to acquire it;
 - (ii) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
 - (iii) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or
 - (C) before a material change of his [or her] position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.
- (1) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means;

Remember DeCSS?



DVD CCA v. Bunner

- How is this suit different from Universal v. Corley?
- What is the claimed trade secret?
- Is it secret?
- Can its posting be enjoined?

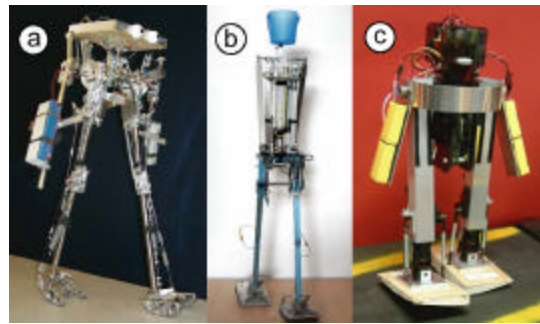
Apples and Bananas

- Joe Kerr works for Banana Corp. and has signed a non-disclosure agreement. Nonetheless, he wants to increase his blog traffic, so he posts pictures of the soon-to-launch smellPod (after Photoshopping out the "CONFIDENTIAL" label). Has Joe misappropriated a trade secret?
- As Joe predicted, the news spreads to hundreds of other blogs overnight, and many of them reproduce the pictures. Can Banana get an injunction against the bloggers? Have they misappropriated trade secrets?

Apples and Bananas

- Jane Goodall runs the weblog "Banana: Unpeeled." She receives an anonymous email with smellPod photos and posts them. Has Jane misappropriated trade secrets?
- Banana Corp. wants to know who leaked the photographs. Can it subpoena Jane for the name of her source?

Robots run amok



Robots run amok

- Trespass to chattels?
- How is eBay harmed by Bidder's Edge?
- What's the difference between Bidder's Edge and Hamidi?
- What values are at issue in the Epstein-Lemley debate?

- CheepTix.com wants to set up an airfare search engine to help travelers find discount flights to vacation spots, offering alternative destinations if it can't find the one requested. CheepTix gets its listings by "crawling" airline websites and "screen-scraping" the fare information they list.
- Just before launch, the CheepTix GC comes to you for advice. What questions do you have for her in assessing the risk of a lawsuit?

- You (a different you) have been hired by Gamma Airlines to develop the company response to screen-scraping robots. Help your client to evaluate the business and legal considerations here.