

Intellectual Property

Professor Wendy Seltzer
w.seltzer@neu.edu
<http://wendy.seltzer.org/neu/IP/>

1

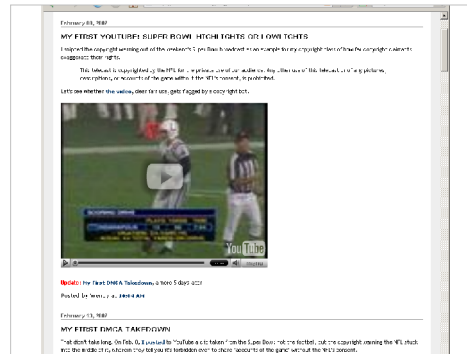
What is "intellectual property"?



Intellectual Property Buckets

- Trade Secret
- Copyright
- Patent
- Trademark
- Related state law (unfair competition, rights of publicity, misappropriation)

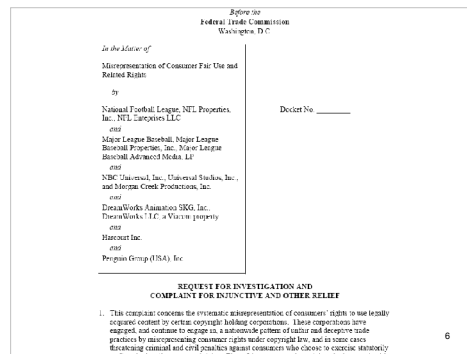
3



<http://www.youtube.com/watch?v=a4uC2H10ulo>

- This telecast is copyrighted by the NFL for the private use of our audience. Any other use of this telecast or of any pictures, descriptions, or accounts of the game without the NFL's consent, is prohibited.

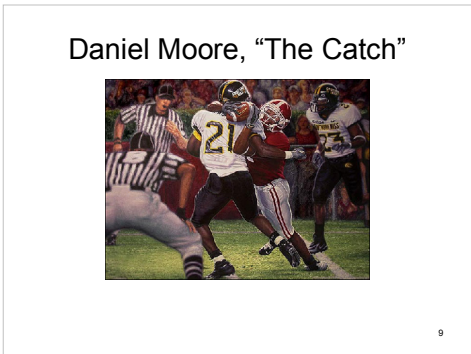
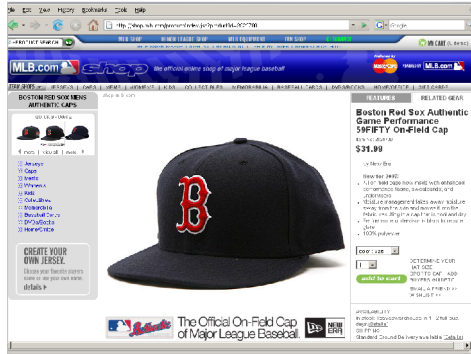
5



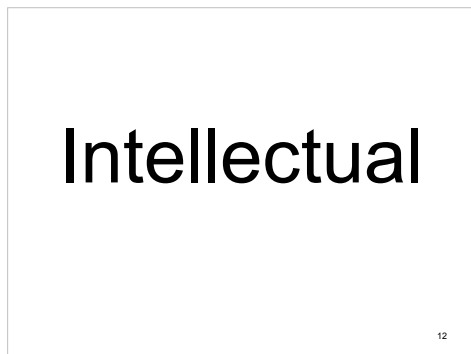
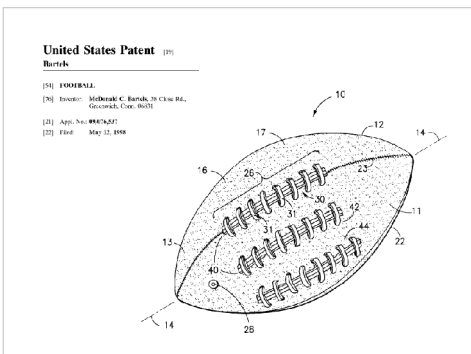
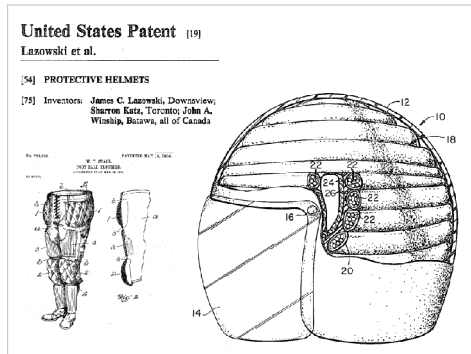
6



7



9



12

Property

13

How do RP and IP compare?



Real or personal property

- Tangible
- Rivalrous
- Excludable



Ideas and expressions

- Intangible (may be embodied in things)
- Non-rivalrous
- Non-excludable

14

	Rival	Non-Rival
Excludable	“private goods”	
Non-Excludable		“public goods”

15

A pure public good



	Rival	Non-Rival
Excludable	private goods automobiles pork bellies	natural monopoly roads
Non-Excludable	common pool fisheries common grazing	public goods national defense lighthouse

17

So, why do we protect IP?

18

Why protect IP?

- Labor-desert theory
 - Personality theory, moral rights
 - Utilitarian law and economics
 - Cultural theory
-
- How well does each explain existing law?
 - How well does each explain what the law should be?

19

Labor-desert theory

- Locke's *Second Treatise on Government* theorizes ownership of *real* property:
- "[E]very man has a property in his own person: this no body has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, **he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property.** It being by him removed from the common state nature hath placed it in, it hath by this labour something annexed to it, that excludes the common right of other men: for this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, **at least where there is enough, and as good, left in common for others.**"

20

Personality theory

- Radin, "[T]o achieve proper self-development – to be a *person* – an individual needs some control over resources in the external environment."
- An artist who feels her self-conception is bound up in her artwork may feel hurt by some uses or abuses of the work.

21

Utilitarian theory

- Provide adequate incentives for the creation of public goods.
- What's the right balance between private incentive and public benefit?
 - IP is both input and output
 - Public welfare (consumer surplus) is lowered when IP creators can monopolize works

22

Cultural planning theory

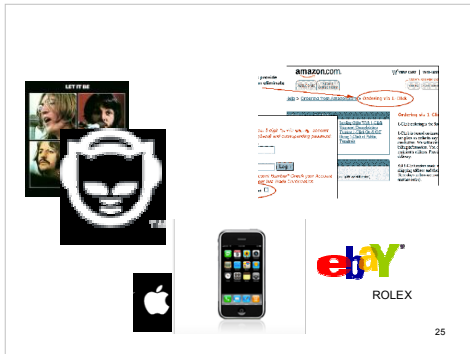
- Fisher: "deliberate efforts to craft or construe rules in order to advance a vision of a just and attractive culture."

23

What theory does the U.S. Constitution endorse?

- **Article 1, Section 8, Clause 8**
- [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;

24



Challenges to / Opportunities for IP

- New technologies
 - Digital networking, copying
 - Biotechnology
- New business and cultural practices
 - Open source
 - User-generated content
 - Search
 - Piracy
- Globalization

Questions about each area

- What is protected?
- How do you get protection?
- What rights does it convey?
- What infringes?
- What defenses are available?

- What is the source of law?
- What is the policy behind it?

Overall questions

- By the end of the course, you should be able to evaluate:
 - What kind of protection is available for a given innovation?
 - What must the innovator do to claim protection?
 - Is more protection always better?
 - How well do our existing intellectual property laws and theories adapt to new technologies and cultural production?

How Will the Course Work?

- | | |
|--|---|
| <ul style="list-style-type: none"> • At Home <ul style="list-style-type: none"> – About 50 pages of reading per class <ul style="list-style-type: none"> • Focus first on cases, statutes, and expository notes • Understand how courts apply the law to facts • Casebook problems are not required; we may discuss some in class – Be aware of IP in the news – Post to wiki | <ul style="list-style-type: none"> • In Class <ul style="list-style-type: none"> – Overview – Mechanics – Cases & Statutes <ul style="list-style-type: none"> • Be prepared to discuss relevant facts and holdings • Policy considerations – Hypothetical questions – Discussion – Slides will be available online after class |
|--|---|

Evaluation

- Exam: Open book, in-class
- Covers all material assigned and covered in class and readings
- Mix of issue spotting, legal analysis, and policy argument
- Participation: in-class and on the wiki, <http://cyber.law.harvard.edu/wseltzer/IP>

Intellectual Property Survey, Fall 2007

Contact

Professor Wendy Seltzer, w.seltzer@mc.edu
Visiting Assistant Professor of Law, Washington University School of Law
P.O. Box 2180, Campus Box 8000, Washington University Law School

Office: 10 Chapel
Classroom: 218 (also 215-14, 16) or by appointment
Telephone: (314) 333-3733
Feel free to call or e-mail me at any (reasonable) time.
Web: <http://www.wendyseltzer.com/wendyseltzer/>

Syllabus

The online version of the syllabus, <http://www.wendyseltzer.com/wendyseltzer.html> is confidential.

- [Fair Assignment](#)
- [Evaluation sheet form](#)

Important Course Information

Attendance and participation: Intellectual Property meets on Mondays and Wednesdays, 1:00-3:00 p.m. You are expected to attend each class prepared to discuss the assigned reading. Regular participation will help you to retain class material, and your participation is an important goal.

Website: The website will provide updates to the syllabus, <http://www.wendyseltzer.com/wendyseltzer.html>, and electronic readings indicated by (web) in the syllabus. In case of confusion, the contact number of the website is in the center.