IP Strategy and Management

- Intro and Branding

**Theories of various types of IP**

- Incentive to . . .
  - Create - ©
  - Invent – Patent
  - Productively keep, yet commercialize, secrets – Trade Secrecy (TS)
  - Incentive “needed” due to public goods problem of information
- Incentive to disclose – Patent overcoming TS
- Post-Invention innovation incentives
  - Prospect theory
- Build Brand or Corporate reputation – Trademark (TM)
- Employee concerns – TS
- Philosophical Approaches
### Influences on/from Technology and Law

<table>
<thead>
<tr>
<th>Production processes</th>
<th>Corporate leveraging</th>
</tr>
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<tbody>
<tr>
<td>↓ cost</td>
<td>network value</td>
</tr>
<tr>
<td>creation / copies</td>
<td>first / standard / “killer app”</td>
</tr>
<tr>
<td>distribute / publish</td>
<td>platform w/ complements</td>
</tr>
<tr>
<td>everything . . . ?</td>
<td>↑ stickiness / lock-in</td>
</tr>
<tr>
<td>scale at ↓ cost</td>
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<table>
<thead>
<tr>
<th>Opportunists</th>
<th>Law</th>
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<tbody>
<tr>
<td>spam</td>
<td>responsive / vested interests</td>
</tr>
<tr>
<td>fraud (e.g. click fraud)</td>
<td>e.g. DMCA</td>
</tr>
<tr>
<td>domain hoarding</td>
<td>↑ functioning of new medium / market</td>
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<tr>
<td>arbitrage</td>
<td>e.g. ACPA</td>
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<td></td>
<td>computer crime law</td>
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<td></td>
<td>Internet governance</td>
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- OpenNap
- Swaptor
- Time
Beating Global Monopolists at Their Own Marketing Game

- Brands as meaning systems
- Brand extensions
- Relationships to market power
  - “replace price with other bases for consumer choice”
- Connections to original purposes of trademark protection

five qualities of a great “brand:” (1) “a compelling idea;” (2) “a resolute core purpose and supporting values;” (3) “a central organizational principle;” (4) an American origin; and (5) use on commodities.
Trade Secret Misappropriation (UTSA)
- Trade – any type of valuable information, very broad
  - formula, pattern, compilation, program, device, method, technique, or process (UTSA §4[preamble])
- Secret – held secret by reasonable precautions
  - reasonable efforts under the circumstances to maintain secrecy (UTSA §4(ii))
  - has value from not being generally known or [not] readily ascertainable (UTSA §4(i))
- Misappropriation – take/use/disclose by . . .
  - improper means or against a duty/promise/agreement
    - improper means includes
      - various bad acts, or
      - breach or inducement of a breach of duty
      - espionage (electronic or other means)

U.S. Software Protection via Copyright
The limited right to exclude others from:
- Reproducing
- Creating derivative works
- Distributing
- Publicly performing or displaying

Rights available to a copyright holder

Code as a literary work


Interface(s) - Input/Output
U.S. Software Protection via Copyright

Digital Rights

Creative Content

Information

Software Code

U.S. Software Protection via Contract & Transactions

Permissions – Blanket Licenses – Form Contracts – Negotiated Contracts

Intellectual Property Rights

Conflict & Preemption

Contract
The elements of Patentability

- **Patentable subject matter**, i.e., patent eligibility
- **Useful/utility** (operable and provides a tangible benefit)
- **New** (novelty, anticipation)
- **Nonobvious** (not readily within the ordinary skills of a competent artisan at the time the invention was made)
- **Specification requirements / disclosure requirements** (enablement, written description, best mode, definiteness)

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Licensing Taxonomy

**Business Models**
- Media (movies, music, etc.)
- Manufacturing
- Software/Information

**Grant**:
- IP/Info + Conditions + Covenants
- IP.Rights/Info + Conditions
- Information
- IP Rights

**Standardized Approaches**

**Assent**
- Use
- ReadMe
- Shrink
- Click
- SignedK

**Scope**

**Remedies**
- © / K

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