**IP Survey**

- Module 1
- Introduction

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**Business / IP Rights Life Cycle**

<table>
<thead>
<tr>
<th>Business</th>
<th>Commercialize Technology</th>
<th>Compete in the marketplace</th>
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</thead>
<tbody>
<tr>
<td>Law</td>
<td>Obtain IP Rights</td>
<td>Enforce IP Rights</td>
</tr>
<tr>
<td></td>
<td></td>
<td>License; Damages &amp; Injunctions</td>
</tr>
</tbody>
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**Time**
The Seating Marketplace

Competing Product

Existing Product

New Product

Trade Secret

IP Survey, Fall 2015
Patent – claims

Narrow

1. A seating apparatus, comprising:
   (a) a horizontal seat; and
   (b) three legs each having one end connected to the bottom of said horizontal seat.

Broad

1. A device for supporting objects, comprising:
   (a) a horizontal support member; and
   (b) three vertical support members each having one end connected to the same face of said horizontal support member.

Patent - patentability

- patentable subject matter
- novelty; utility; non-obviousness
- specification support

- novelty:

Competing Product

Existing Product

New Product

Time
Patent - infringement

The Eyes of Marshall are upon you
As you legislate.
The eyes of Marshall are upon you
He will review your slate.
Do not think you can escape him
Your law must pass his way
As keeper of the constitution
The Court will have its say!
**Copyright**

The eyes of van Gogh are upon you
As you go create
The eyes of van Gogh are upon you
He will review your slate.

**Trademark**

<table>
<thead>
<tr>
<th>Generic</th>
<th>Descriptive</th>
<th>Suggestive</th>
<th>Arbitrary / Fanciful</th>
</tr>
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<tbody>
<tr>
<td>Stool</td>
<td>Sitting Stool</td>
<td>TriStool</td>
<td>3LS</td>
</tr>
<tr>
<td>Super Stool</td>
<td></td>
<td></td>
<td>Tiger Claw</td>
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<tr>
<td>Sturdy Stool</td>
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</tbody>
</table>

**Prior Rights?**
- TriStool for plant pruning equipment?
- TriStool for toilets?
- TriStool for shaving razors?
- TriStool for 4 legged chairs with backs?

**Infringing?**
- TryStool for stools?
- www.tristool.com?
- TripleStool?
INS v. AP (U.S. 1918)

- Dispute

- Questions
  - Property in news?
  - If so, survive publication?
  - Are INS' acts of appropriation unfair competition?

- Dual character of the news

- What does the designation of the news as “quasi property” mean?

INS v. AP (U.S. 1918)

- Rights of public to use AP’s news versus rights of a competitor to use it

- Is INS reaping where it has not sown?

- Did AP abandon the news by publishing it?
Authors & Inventors clause

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

U.S. CONST., art. I, § 8, cl. 8.

Commentary on Authors & Inventors clause

It was beneficial to all parties, that the national government should possess this power; to authors and inventors, because, otherwise, they would have been subjected to the varying laws and systems of the different states on this subject, which would impair, and might even destroy the value of their rights; to the public, as it would promote the progress of science and the useful arts, and admit the people at large, after a short interval, to the full possession and enjoyment of all writings and inventions without restraint.

In short, the only boon, which could be offered to inventors to disclose the secrets of their discoveries, would be the exclusive right and profit of them, as a monopoly for a limited period.

And authors would have little inducement to prepare elaborate works for the public, if their publication was to be at a large expense, and, as soon as they were published, there would be an unlimited right of depredation and piracy of their copyright.

Federalism concerns place much of IP law at the Federal level

IP laws exist as a public policy tool to promote production of inventions and works for the public domain (eventually)

Patent versus Trade Secret protection

Copyright to support production and distribution of works

Story, Commentaries on the Constitution of the United States (1833) (emphasis added)
### Basis for IP Rights

<table>
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<tr>
<th>Option</th>
<th>Problem</th>
<th>Benefit</th>
<th>Cost</th>
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<tr>
<td>No IP</td>
<td>Public good nature of info: -nonrivalrous -nonexcludable</td>
<td>Invest in R&amp;D, create &amp; sell product</td>
<td>Imitations sell at lower cost</td>
</tr>
<tr>
<td>IP</td>
<td>Costs associated with limiting access to info</td>
<td>Invest in R&amp;D, create &amp; sell product</td>
<td>IP rights block imitators to some degree</td>
</tr>
</tbody>
</table>

### Benefit of IP

- Info is produced & supplied’
- Who obtains the benefit?
- What other solutions are possible?
- Are IP rights better than other solutions?