International Intellectual Property



- Slides for Module 1
- Introduction and Overview



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Themes

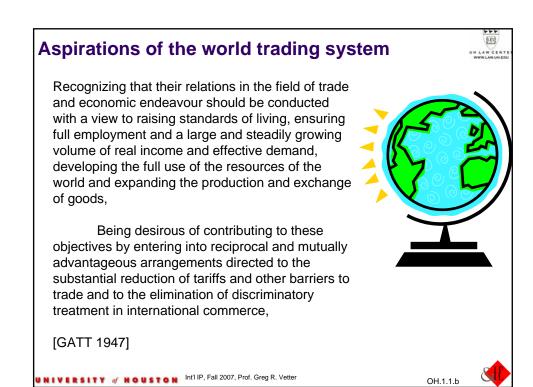


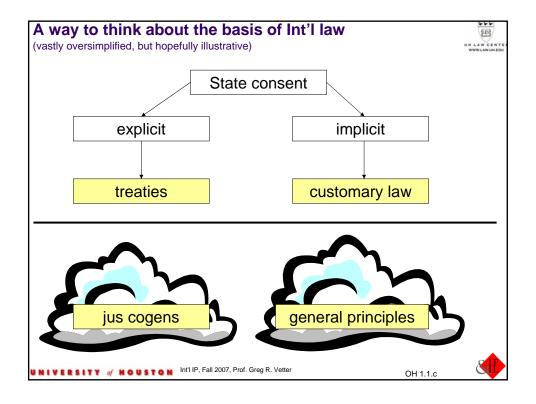


- Geo-political trade relations
- Traditional divisions of IP law
 - Industrial property
 - Literary and artistic property
- Public/private distinction
- Comparative analysis
 - Between and among jurisdictions
 - Instruments (mostly treaties) versus implementation
- Extent of and forces driving harmonization & limits of these forces









Koumantos - Meaning of "IP"



- Original intangibles
 - Literary and artistic works
 - Inventions (patents)
 - Trademark (source indicating significance)
- Extension of intangible coverage
 - Designs and models
 - Commercial names
 - Neighboring rights
 - Plant production rights
 - Semiconductor topography
 - Databases, within copyright, or sui generis
 - Unfair competition: geographical indications??
 - Unfair competition: trade secrets??
- Are these rights monopolies?

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Dot-Communist Manifesto



A sharp, unexpected twang of conscience hit me the other day. It occurred as I was merrily downloading the umpteenth Pet Shop Boys B side from another Napster user's hard drive. Was this theft? Nobody, I rationalized, was going to be without the Extended Rollo Mix of "New York City Boy" because of my actions. All Napster is, after all, is a huge database of MP3 files, a musical commune dreamed up by a college-freshman geek. And sharing a database isn't theft. If you agree to join the Napster "community," you agree to share every MP3 you have with any other Napsterite who is online at the same time you are. . . .

So whom was I hurting by copying one lousy song? Sure, I'd avoided paying a record company a royalty -- but it was rich enough already. Likewise the Pet Shop Boys. And it wasn't as if I'd smuggled a disc out of Tower Records in a knapsack. It wasn't even in any meaningful sense "mine," since other Napster users could now download it from me without my even noticing. Neither had it been in any meaningful sense "theirs" -- once they agreed to pool their own MP3 collection with those of other Napsterites.

What exactly was going on here? The only workable definition is communism. . . . By turning physical property into endlessly duplicable e-property, the ancient human problem of "mine-thine" has been essentially solved. . . .

McCarthy: IP – the Overlooked Export?

- Interaction between trade relations and IP?
- Importance of IP in trade driving need to harmonize away the idiosyncrasies of US law
 - Examples:
 - First to invent
 - Copyright formalities
 - TM intent to use
- Effect of counterfeiting?
- Greater social impact of the information age









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IP & the National Information Infrastructure (NII)



- Example problems:
 - A user in France access a database in the US and have a copy downloaded to a computer in Sweden – Whose copyright law applies?
 - Due to territoriality, standards for protection in international conventions can be implemented in particular countries such that an act is infringement in one but not another.
- As a result, the NII working group report recommends greater harmonization
- And, recommends conditioning access to our NII for improved IP protection



Dinwoodie – Integration of Domestic & Int'l IP Lawmaking

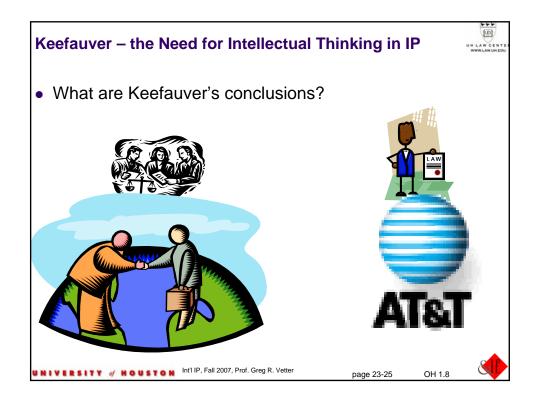
- Assertion is that it is increasingly difficult to analyze domestic IP law and policy without reference to Int'l lawmaking
 - If true, why?
- New phenomenon of integrated lawmaking
 - Relationships among national, regional and int'l laws and institutions
- Globalization (note 2, pg. 25)



Gana: Creativity in the 3rd World



- IP laws, like other laws (and perhaps more so) reflect societal values, i.e., its perception of "the good life"
 - Laws being perhaps "the principle institution through which a society can assert its values"
- Anglo-American copyright reflects a value of capitalism & individualism
 - incentives to create a "goodly" supply of literary works
- Important for modern IP debate to relate IP laws to the societal values of developing counties where new IP laws are being established
 - To obtain better enforcement
 - To "tune" the IP laws to the societal values and benefit
 - RATHER than imposing the global model in locales where there may be negative cultural side effects, such as the TRIPS approach which seeks greater enforcement of the global model



Civil Law Systems (note 7)



- code-based system of law
- Lack of formal stari decisis
 - Prior decisions have influence, especially as the same principle is expressed in many court opinions
 - Some systems have "jurisprudence constante"
 - which means that they try to decide like cases alike
- Judge Cooper on the differences between the two systems
 - "A civilian system differs from a common law system much as rationalism differs from empiricism or deduction from induction. The civilian naturally reasons from principles to instances, the common lawyer from instances to principles. The civilian puts his faith in syllogisms, the common lawyer in precedents; the first silently asking himself as each new problem arises, "What should we do this time?" and the second asking aloud in the same situation, "What did we do last time?" . . . The instinct of the civilian is to systematize. The working rule of the common lawyer is solvitur ambulando."



Kozyris – Comparative Law for the 21st Century



- "Undisputed" utility of the comparative method
 - it gives alternative solutions and better understanding of our own law, and is necessary for the transactional practitioner
 - Like the man searching for bricks . . .
- Need more than legal texts to pursue the comparative method
 - Legal and social culture
- Fundamentals of comparative law are stable
 - But, its application has expanded in two ways, enabled by new technology:
 - Beyond the US and Europe
 - Beyond private law into public and regulatory law

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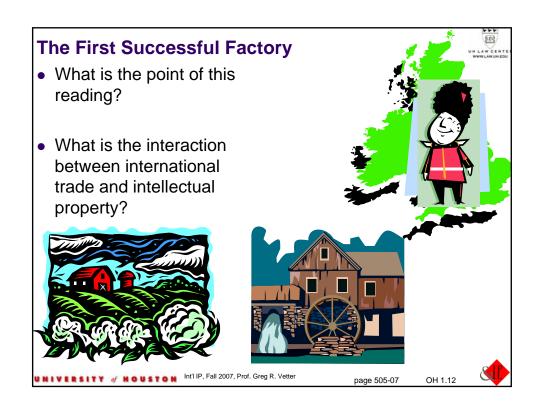


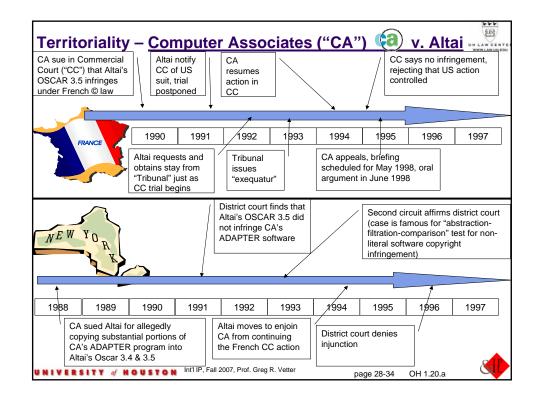
Other Notes & Questions



- Significance of IP in Global Economy (note 3, pg. 25)
 - Value of tangible property versus intangible property?
 - What characteristics of IP cause the push to address IP in the international stage?
- Cost / benefits of differing national laws? (note 4, pg. 26)
 - When are divergent laws desirable and when is internationalization warranted?
- Values underlying IP & thinking internationally (note 5-6, pg. 26)
 - Is the western paradigm becoming universal?
 - Dangers of int'l lawmaking?
 - "In the current climate it is possible for as yet unimplemented legislative initiative of one government to become an international minimum standard for other governments before most people affected by it ... even know that proposals for new IP rights are on the table."
 - Capture and special interests' influence







Territoriality - CA v. Altai





- Res Judicata
 - Bars litigation of claims arising from the transaction or series of transactions subject to the prior suit
 - the transaction or connected series of transactions at issue in both suits is the same
 - "same" means:
 - the same evidence is needed to support both claims, and
 - facts essential to the second were present in the first
 - Does not apply where the initial forum did not have the power to award the full measure of relief sought in the later litigation
 - Here, the lack of power is from lack of personal jurisdiction over French Altai distributor

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Territoriality - CA v. Altai





- Collateral Estoppel
 - Bars a party from relitigating in a second proceeding an issue of fact or law that was litigated and actually decided in a prior proceeding
 - if that party had a full and fair opportunity to litigate the issue in the prior proceeding and
 - the decision of the issue was necessary to support a valid and final judgment on the merits
 - Issues must be identical but are not so when the legal standards governing resolution are significantly different
 - Here, Altai argues that the French standard for copyrightability of software is not "substantially different" from the US standard, because, both protect expréssion, not ideas
- Antisuit injunction & int'l comity
 - Antisuit injunction requires (i) same parties and (ii) resolution of the case before the enjoining court would be dispositive of the action to be enjoined
 - the power to enjoin a foreign suit should be uses sparingly under due regard for principles of int'l comity



International Intellectual Property



- Slides for module 2
- International Law and Institutions

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