Int’l IP

- Module 6
- Int’l Enforcement of Intellectual Property Rights

Commercial Piracy

- Apex MNE hypothetical
  - Role of organized crime
- Copyright piracy
- Trademark piracy
  - the most serious form of piracy
- Patent piracy?
  - deemphasized as commercial piracy
- Comparison to narcotics trafficking for the above
- Trading partners and border seizure
London Film v. ICI (S.D.N.Y. 1984)
- Locations
  - London a UK plaintiff
  - ICI a NY defendant
  - Alleged infringement in Chile and South America
- ICI specializes in distributing “public domain” works
- ICI claims the NY district court should abstain from exercising jurisdiction
  - Alien treaty rights
  - Forum non conveniens
  - Complex foreign law for many countries
  - Act of state doctrine
- Comity
  - Difficulty of determining foreign IP rights validity
  - But, validity not as large an issue in copyright
  - No good alternative forum

- French fashion clothing companies
- Viewfinder fashion websites
- Default judgment in France in favor of French companies
- Comity
  - Source of law to determine if foreign judgment is enforced
    - NY state law via uniform act
  - Copyright law analysis
    - Fashion designs not copyrightable under U.S. law
    - Even if copyrightable, Viewfinder’s use was fair use
    - But, French copyright law isn’t “repugnant”
  - Freedom of expression under the U.S. Constituion
    - Against this, the French copyright law is “repugnant”
    - Commercial speech is still protected speech
  - But, the French companies argue . . .
    - Not action by Viewfinder to send a message
    - Not news