

Intellectual Property

A Failed System

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Computer Ethics

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Outline

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I am a criminal

- ▶ Assuming default judgment penalties applied by federal judge Nancy Gertner ¹
- ▶ I have caused over \$5,000,000 dollars in damage, *at the minimum*

¹<http://arstechnica.com/tech-policy/news/2009/09/ignoring-riaa-lawsuits-cheaper-than-going-to-trial.ars>

I am a criminal

- ▶ Assuming default judgment penalties applied by federal judge Nancy Gertner ¹
- ▶ I have caused over \$5,000,000 dollars in damage, *at the minimum*
- ▶ I am not alone on this

¹<http://arstechnica.com/tech-policy/news/2009/09/ignoring-riaa-lawsuits-cheaper-than-going-to-trial.ars>

Nation of criminals

- ▶ Estimation of music piracy rates range from 18% - 95%²
- ▶ Patent lawsuits are flying fast and furious
- ▶ In our litigious society, lawsuits alleging infringement are endemic
- ▶ We live in a nation of criminals

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Nation of criminals

- ▶ Estimation of music piracy rates range from 18% - 95%²
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- ▶ We live in a nation of criminals
- ▶ Or do we?
- ▶ When the law is being openly ignored by a respectable chunk of our population, perhaps we need to review the law

²<http://arstechnica.com/media/news/2009/01/ifpi-music-piracy-at-95-or-is-it-18.ars>

The Name of the Game

- ▶ The name of the game is Intellectual Property
- ▶ It's an important part of our society
- ▶ It's been referenced in this class frequently
- ▶ And it matters in our day to day life.

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What is intellectual property?

Definition (Intellectual Property)

The World Intellectual Property Organization defines intellectual property as the combination of:³

- ▶ Industrial property
- ▶ Copyright

³<http://www.wipo.int/about-ip/en/>

Industrial Property

- ▶ inventions (patents)
- ▶ trademarks
- ▶ industrial designs
- ▶ geographic indications of source

- ▶ includes literary and artistic works
 - ▶ novels
 - ▶ poems
 - ▶ plays
 - ▶ films
- ▶ musical works
- ▶ artistic works
 - ▶ drawings
 - ▶ paintings
 - ▶ photographs and sculptures
 - ▶ and architectural designs

Broad topic, narrow focus

- ▶ Obviously, there is a lot of material here
- ▶ However, the main focus today is on patent and copyright law
- ▶ They are the most important and most contentious topics of IP

But what are we really talking about?

- ▶ Is intellectual property really property?
- ▶ Property is an economic concept that is based on limited supply and infinite demand
- ▶ Ideas are not concepts that have bounded supply
- ▶ Calling these constructs “Intellectual Property” clouds our perspective.
- ▶ “You don’t own a song like you own a television”⁴
- ▶ For the sake of sanity we will still use the term Intellectual Property, but with the knowledge that it is a loaded term.

⁴Doctorow, Cory. (Thursday, February 21, 2008). “Intellectual Property” Is a Silly Euphemism. The Guardian Online.

Breaking it down

- ▶ Copyright and patents obviously dwell in vastly different realms
- ▶ We will analyze them separately

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Patents in brief

- ▶ One major component of this field are patents
- ▶ A patent is an monopoly granted to the creator of some sort of new technology or idea
- ▶ It is supposed to reward inventors

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- ▶ A patent is an monopoly granted to the creator of some sort of new technology or idea
- ▶ It is supposed to reward inventors
- ▶ Unfortunately, the system is ripe for abuse

Abusing Patent Law

- ▶ Patent law has many weak points
- ▶ Patents are only as good as the body creating the patents
- ▶ With technology advancing at the rate that it is, patent offices cannot keep up

A Case Study in Patent Abuse

- ▶ Note the patent for the **doubly linked list** ⁵
- ▶ Seriously. You can't write a doubly linked list without infringing on that patent
- ▶ This is *patently absurd*.
- ▶ We as a university have institutionalized the infringement of this patent in our classes
- ▶ Someone's going to have to break the news to Karla...

⁵<http://www.patentstorm.us/patents/7028023/claims.html>

- ▶ The goal of patents is to promote innovation and reward creators
- ▶ Grants a monopoly on the innovation with the expectation that the creation will come to market
- ▶ What if people have no intention of marketing products and only go for the monopoly?

Definition (Patent Troll)

Wikipedia defines a patent troll as a person or company that enforces its patents against one or more alleged infringers in a manner considered unduly aggressive or opportunistic, often with no intention to manufacture or market the patented invention. ⁶

- ▶ Also called as a “Non practicing entity”
- ▶ 45% of all patent lawsuits are instigated by patent trolls⁷
- ▶ if 45% of lawsuits are fraudulent on this ground alone, patent law is in serious trouble.

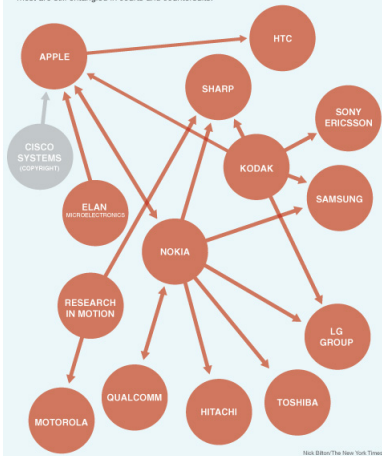
⁶http://en.wikipedia.org/wiki/Patent_troll

⁷<http://www.patents.com/patentscommunity/blogs/GlennS/my-blog/118/patent-trolls-winning-more-cases>

Does this look like a functioning system?

An Explosion of Mobile Patent Lawsuits

The graphic below shows which major technology companies have sued each other over patents related to mobile devices. Although a small number of these cases have settled, most are still entangled in courts and countersuits.



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⁸<http://bits.blogs.nytimes.com/2010/03/04/an-explosion-of-mobile-patent-lawsuits/>

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- ▶ Copyright was brought about in a similar form as patents
- ▶ Protect content creators, and ensure they profit from their endeavors
- ▶ Sounds like a fair system, right?

Copyright failure

- ▶ As noted earlier, copyright infringement is beyond rampant.⁹
- ▶ We have entire industries based around the exploitation of this
- ▶ The 160 gigabyte iPod would cost \$40,000 to fill legally
- ▶ MP3 players would probably not exist without piracy
- ▶ Our entire generation was weened on pirated music

⁹<http://arstechnica.com/media/news/2009/01/ifpi-music-piracy-at-95-or-is-it-18.ars>

A disconnect from reality

- ▶ The RIAA and MPAA soldier on to fight online piracy
- ▶ Their main method - destroying lives
 - ▶ Coercing people to settle for exorbitant sums
 - ▶ Pushing massive default judgements and avoiding trial
 - ▶ Driving legislation to drive infringement costs even higher
 - ▶ Trying to force ISPs to enforce copyright laws
- ▶ We all know of some sick act done to protect copyright
- ▶ And in the end, it does little good.

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- ▶ We all know of some sick act done to protect copyright
- ▶ And in the end, it does little good.
- ▶ But at least the copyright holders are being protected, right?

Who is being protected?

The band is now 1/4 of the way through its contract, has made the music industry more than 3 million dollars richer, but is in the hole \$14,000 on royalties. The band members have each earned about 1/3 as much as they would working at a 7-11, but they got to ride in a tour bus for a month. The next album will be about the same, except that the record company will insist they spend more time and money on it. Since the previous one never “recouped,” the band will have no leverage, and will oblige. The next tour will be about the same, except the merchandising advance will have already been paid, and the band, strangely enough, won’t have earned any royalties from their T-shirts yet. Maybe the T-shirt guys have figured out how to count money like record company guys. Some of your friends are probably already this fucked. ¹⁰

¹⁰<http://www.negativland.com/albini.html>

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Something has to give

- ▶ As stated, there are serious problems with intellectual property
- ▶ The term itself is a misnomer at best, sophism at worst
- ▶ The underlying concepts are broken
- ▶ Immeasurable harm is being done

Is there a solution?

- ▶ I don't know if there is one single solution
- ▶ There are some innovative ideas out there for both systems
 - ▶ Patent law - see the GPL/LGPL
 - ▶ Copyright - Creative Commons/innovative payment schemes
- ▶ Regardless, we need to experiment and see if we can correct these injustices.

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10. <http://www.negativevland.com/albini.html>