

“How Free Culture Works”  
or  
“Intellectual Property and  
Why You Shouldn't Call It That”

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# Topic Outline

- Components of Intellectual Property
- Copyrights
- Patents
- Licensing
- Conflicts
- Free Culture
- Software Patents
- How to Help / Q & A

# But Wait, Who the Heck are You?

- IANAL – I Am Not A Lawyer
- Is anyone here actually a lawyer?
- Proprietary Software Developer by Day
- Free Software Developer by Night
- Graduated from Stony Brook - CS in 2004
- Took a Constitutional Law Class
- Read Books on Free Culture & Laws Affecting It
- I am Genuinely Interested in this Stuff

# Intellectual Property's Properties

- Copyright
  - Grants exclusive rights to regulate the use of a particular creative work for a limited time.
- Patent
  - Grants exclusive rights to produce an invention for a limited time in exchange for the public disclosure of certain details of the invention
- Trademark
  - Exclusive rights to a logo / brand name indefinitely.
- Trade Secret
  - Anything that has been kept secret (covered by NDAs)

# Trademark <sup>TM</sup> ®

- Serves as an exclusive identifier of the commercial source or origin of products or services
- Many different types of signs can be protected with trademark
  - Names, Logos, Sounds, Smells, Moving Images, Taste, etc.
- The ® symbol indicates the trademark was registered with the USPTO
- The <sup>TM</sup> symbol indicates that the user considers the associated sign to be a trademark
  - It is not necessary to register a trademark to claim rights to it, but registration does offer some benefits

# Trade Secrets

- A confidential practice, method, process, design, or other information used by a business to compete with other businesses
- What can/can't be a trade secret?
  - Can not be generally known to the relevant portion of the public
  - Must confer some economic benefit on its holder
  - Must actually be protected by the holder (NDAs, etc.)
- Benefits of Trade Secrets
  - Indefinite & No Disclosure Necessary
- Downsides
  - Reverse Engineering is Entirely Legal

# Copyright ©

- Exclusive right to regulate the use of a creative work
  - Exclusive rights include the right to: produce copies of the work, import or export the work, create derivative works, perform or display the work publicly, sell or assign these rights to others
- Congress receives power to create copyright protection from the constitution (Article I, Section 8, Clause 8)
  - “The Congress shall have power ... 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”
- The purpose of copyright is to “promote the progress of science and useful arts”

# More Copyright

- Copyright is Automatic
  - Nothing has to be done to claim copyright over an original work
- A work can be registered with the US Copyright Office
- If something is not copyrighted, it is in the public domain
  - Since copyright is automatic, a work must be explicitly placed in the public domain by the copyright holder
  - When a copyright lapses, the work falls in to the public domain
- Works in the Public Domain are not controlled by anyone

# History of Copyright Term

- 1790 – 14 years (possible 14 year extension)
- 1831 – 42 years (28 + 14)
- 1909 – 56 years (28 + 28)
- 1962 – 59 years
- 1965 – 61 years
- 1967 – 63 years
- 1968 – 64 years
- 1969 – 65 years
- 1970 – 66 years
- 1971 – 67 years
- 1972 – 68 years
- 1974 – 70 years
- 1976 – Life of Author + 50 years (75 for works for hire)
- 1998 – Life of Author + 70 years (95 for works for hire)
  - Sonny Bono Copyright Extension Act (Mickey Mouse Protection Act)
- No works will enter the public domain until 2019

# Patents

- Grants exclusive rights to produce an invention for a limited time in exchange for the public disclosure of certain details of the invention
- A patent provides the right to exclude others from making, using, selling, offering for sale, or importing the patented invention
- Patents last 20 years in the United States
- Patents must be filed with the USPTO

# More Patents

- An invention is patentable if it is:
  - Novel: It must be a new invention
  - Non-Obvious: This should be obvious
  - Useful: It must actually do something
- US patents are granted to the first-to-invent
  - Rest of the world grants patents to the first-to-file
- All patent litigation is handled by private lawsuits

# Licensing

- A license is a way for a patent or copyright owner to bestow certain rights to someone else.
- Proprietary licenses are kind of boring because they don't really bestow any rights upon the licensee except the right to use the software on one computer (and you often have to pay for that right)
- Free software licenses are much more interesting, although amongst themselves they tend to offer similar rights to the licensee

# Open Source Definition

1. Free redistribution must be allowed
2. Source code must be available
3. Derivative works must be allowed
4. Derivatives may be forced to be patches
5. No discrimination against persons or groups
6. No discrimination against fields of endeavor
7. License must be transferable
8. License must not be specific to a single product
9. License must allow distribution w/ other software
10. License must be 'acceptable' over any medium

# General Public License (GPL)

- Right to use the software for any purpose
- Right to make verbatim copies of the software
- Right to make derivative works of the software provided that they are licensed under the GPL as well. This is 'copyleft'.

## Lesser GPL

- Everything stated above applies
- Linking against a library under the LGPL doesn't require that the application use the LGPL
- A LGPL licensed library can be 'upgraded' to the GPL by the licensee at any time

# MIT, BSD, MPL Licenses

- MIT bestows all rights as long as a copyright notice is left intact
- BSD is very similar to the MIT license with the only difference being that you must get permission to use the name of the program or author to promote the derivative work
  - Prior to 1999 the BSD license had 4-clauses where the 3<sup>rd</sup> clause stated that all advertising for a derivative work must include text explaining that the work was derived in part from the original work
- MPL is very similar to the GPL but allows separate files in a distribution to be licensed under different terms

# Why none of this should be called 'IP'

- The term distorts and confuses the issue of copyright, patents and trademarks and its use was and is promoted by those who gain from this confusion.
- It suggests thinking about copyright, patents, etc. by analogy with property rights of physical objects. However, this idea is at odds with the philosophy behind copyright and patent law.
- Perhaps more damaging is the over-generalization that results from lumping all of these fairly different things together under one term.

# Changes in Technology Affect Culture

- In 1790 all creativity is transparent
  - Read the 'source' of books
  - Didn't have to read patent for cotton gin to figure it out
- In 1790 most uses are unregulated
  - Only publishing is regulated
  - Reading, Giving, Selling are unregulated uses (not fair uses)
- Enter Computers and the Internet
  - Opaque creativity – can't see how things work
  - Every act is a copy (reading, giving, etc.)
  - Control of uses becomes possible (e-book readers)

Where does Free Culture fit in?  
Oh, and what the hell is Free Culture?

- A bottom-up, participatory structure to society and culture rather than a top-down, closed, proprietary structure.
- Put more simply, any piece of culture that grants some rights to the public that are traditionally withheld to the copyright owner is a part of Free Culture.
- Free Software is a subset of Free Culture
- This is 'Free as in Speech' not 'Free as in Beer'

# Creative Commons

- Creative Commons is a nonprofit organization that offers a flexible copyright for creative work.
- Creative Commons makes a set of 6 licenses available
- Every CC license includes the obligation to give the author credit for the part of the work that you used (attribution)
- The author then decides if they want to allow derivatives:
  - Derivatives Allowed, Share-Alike, or No-Derivatives
- The author then decides if they want to allow commercial distribution of their work.
- These 2 decisions allow for 6 licenses that range from Attribution only to Attribution Non-Commercial No-Derivs

# Software Patents

- “If people had understood how patents would be granted when most of today's ideas were invented and had taken out patents, the industry would be at a complete standstill today.”
- “The solution is patenting as much as we can. A future startup with no patents of its own will be forced to pay whatever price the giants choose to impose. That price might be high. Established companies have an interest in excluding future competitors”
- -- Bill Gates, 1991

# More Software Patents

- How do patents affect software differently than other products?
- The software industry is based on incremental innovation. Ideas are combined all of the time to form new products and new innovations. This is how the software industry works.
- Software is mathematics at its core and this makes designing and implementing a product of similar complexity far easier. So, we make products of much greater complexity and are nowhere near one-patent-per-product.
- Even if you had an idea for a brand new kind of program, could you make it without using any existing ideas?

# More Software Patents

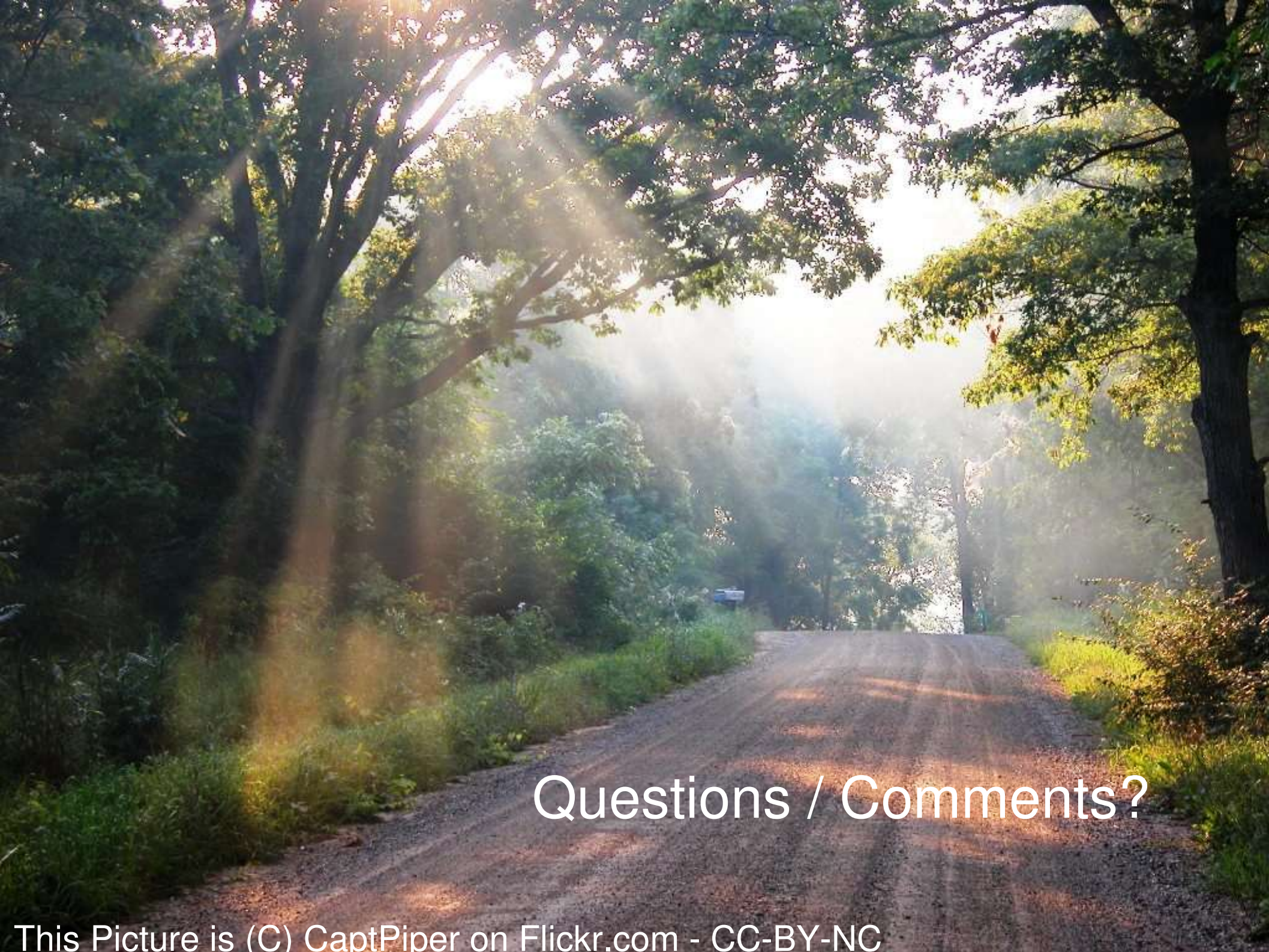
- Microsoft lost \$521 million in a patent lawsuit with Eolas over Internet Explorer plug-ins. Why do they favor patents?
- Software patents are primarily a tool for squeezing out small competitors. They are not often used to make money directly and they are definitely not 'promoting the progress of science and the useful arts'.
- Large corporations have deals with one another to cross-license their patent portfolios. So, we end up with large corporations being left-out of the software patent debacle while small companies can't do much of anything.

# All of These Things Are Changeable

- **This is your culture.**
- “There has never been a time in history when more of our 'culture' was as 'owned' as it is now. And yet there has never been a time when the concentration of power to control the uses of culture has been as unquestioningly accepted as it is now.” -- Lawrence Lessig
- A good example of how changeable these laws are can be found in a story about how 2 farmers in North Carolina in 1945 were losing chickens to military aircraft flying overhead
- “Common sense revolts at the idea”

# What Can You Do To Help?

- Create Free Culture
- Enjoy Free Culture
- Remix Free Culture
- Help spread Free Culture
- Financially support Free Culture (EFF, Creative Commons, Firefox, Debian, etc.)
  - Donate money
  - Buy goods like tee shirts, stickers, buttons, etc.



Questions / Comments?