# International Legal Issues

## Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>International Legal Issues</td>
<td>2</td>
</tr>
<tr>
<td>Intellectual Property Laws</td>
<td>3</td>
</tr>
<tr>
<td>Patent</td>
<td>4</td>
</tr>
<tr>
<td>Trademark</td>
<td>6</td>
</tr>
<tr>
<td>Copyright</td>
<td>8</td>
</tr>
<tr>
<td>Trade Secret</td>
<td>11</td>
</tr>
<tr>
<td>Copyright</td>
<td>12</td>
</tr>
<tr>
<td>Trade Secret</td>
<td>13</td>
</tr>
<tr>
<td>Import / Export Controls -1</td>
<td>17</td>
</tr>
<tr>
<td>Trans-border Data Flow</td>
<td>18</td>
</tr>
<tr>
<td>Licensing Issues</td>
<td>20</td>
</tr>
<tr>
<td>Trans-border Data Flow</td>
<td>21</td>
</tr>
<tr>
<td>Licensing Issues</td>
<td>23</td>
</tr>
<tr>
<td>Notices</td>
<td>29</td>
</tr>
</tbody>
</table>
**015 Ben Malisow: Internationally.
Intellectual Property Laws

Designed to protect a creator's rights to their own work

Meant to attenuate copying or using created work without permission

Examples

- Patent
- Trademake
- Copyright
- Trade Secret

**016 There are a lot of laws out there that are supposed to be international defined by treaties governing intellectual property. We talked somewhat about intellectual property, what is that again? Remind us? Matt, what's an intellectual property?

Student: Just anything a company owns that may be worth value but not physical.

Ben Malisow: Does it have to be a company?

Student: Well any entity.

Ben Malisow: Anything, intangible stuff, right? Ideas, creative works, media, good.
Copyright law is meant to enforce your claim on the value of those things and also to limit the distribution of those things without your approval. Does that make sense? These are examples of intellectual property laws. Let’s talk about each of them in turn.

**Patent**

Grants the owner a legally-enforceable right to exclude others from practicing the invention covered for a specific time (usually 20 years)

Strongest form of intellectual property protection

Protects novel, useful, and nonobvious inventions

Requires formal application to a government; published upon granting

**017** A patent is very strict and it gives you an exclusive right to your intellectual property. It’s limited, it’s limited and it’s shorter than most of the other coverages. It is novel, useful, or nonobvious inventions. Who do you apply to, to get a patent?

Student: Patent Office?
Ben Malisow: Oh sorry. Yeah, the Patent Office, yeah, the Patent Office. Very good. And the government is supposed to catalogue all of these things so that they don't conflict with each other so that if one person has a patent for a certain type of invention, nobody else can file a similar patent that doesn't inherently change that idea because otherwise you would be stepping on each other and replicating the same things and your patent would be pointless and worthless. It's as soon as it's been granted it's published so even though everybody else has the plans to it and see how you did it and reverse engineer it, they can't do it. They can't sell anything with it, they can't incorporate those things into their system without paying you royalties that you agree on.
Trademark

Trademark

Designed to protect the goodwill and reputation a merchant or vendor invests in its products

Conveys exclusive rights to the owner of markings the public uses to identify that owner’s goods and products

Can be words, symbols, colors, sounds, designs

Registered with a government registrar

Must be distinctive

**018 Trademarks, little different. A trademark protects something that affects the reputation of an organization. Usually this is a corporation or a company. It's rare to find individuals that have trademarks. Can anyone give me an example of a trademark?

Student: Along the bottom of the screen there.

Ben Malisow: This one right here right? Trademark graphic, sometimes even trademark fonts, right? Recent interest in trademark rulings had to do with a color scheme, had to actually do with the pattern of colors inside a given brand. Anyone think of what that one was? Burberry?
Student: Oh the plaid.

Ben Malisow: The plaid. They were using a distinctive set plaid and their claim was that plaid in that color scheme in that format is us. Everybody sees it. They know that it’s us. Even if there’s a logo on that bag that’s somebody else’s logo, they know that that’s our bag so those people are ripping off our goodwill. And the court looked at it both ways. They said “You’re claiming a color. You’re asking a lot here.” You know? And I’m not quite sure what the outcome was of that but I thought it was a very interesting case and it was followed right on the heels, so to speak, of a set of footwear that has a distinctive color scheme on their sole of the shoes. I don’t know, I think it was orange soles. Help me out here. Brent. You got Google?

Student: I was doing the Burberry first.

Ben Malisow: Okay yeah, yeah. Again they’re going for the color scheme in the location. So we see those a lot and some of them are actually claiming copyright infringement more than trademark. And some of them want to go for patent. It’s very interesting. Trademarks most often are standalone kinds of things. There is trademark right there, the graphic of the Starbucks girl. Nike swoosh is a good one. Anyone ever see Coming to America? Eddie Murphey?

Student: Yes.

Ben Malisow: McDougal’s. They have the golden arches, I have the golden arcs, right? Yeah. Again must be registered with the government and it has to be
distinctive enough that it couldn't be mistaken for anything else. That it is what it is by recognition. That's what the value is of that intellectual property.

Copyright

Copyright

Covers the expression of ideas, not ideas themselves

Protects writings, databases, recordings, computer programs

Copyright is usually granted automatically to the creator

Protection is weaker than with patents, but much longer (70 years after creator's death)

**019 Copyright is more about the expression of ideas. There is that old Onion, anyone read The Onion? Old Onion article "Bill Gates Patents Zeros, Ones". The joke being there's only 26 letters in the English language that if you were to say there was going to be a finite combination of those 26 letters, someone is going to come up with the same idea that's been generated somewhere else but the person who did it first should have claim to that. Recordings, software, writing. Usually in the United States as
soon as you create it, you own it. You
own it. You don't have to put that "C" with
the circle on, a lot of people believe that
that is a copyright. You don't have to send
it off to the government to be copyrighted.
You don't need to get a lawyer to be
copyrighted. All you have to do is create
it. If you are the first user you are it, you
are the owner. What's the trick with that
though?

Student: You need proof.

Ben Malisow: You need to be able to
show that you beat somebody else to the
punch, right? And there's many different
ways of doing that. There's plenty of
different ways of doing that as well. It's a
weaker protection but lasts a lot longer.
To my good friends downstairs.

Student: Walt.

Ben Malisow: What?

Student: Walt.

Ben Malisow: Walt, what did Walt do? Or
what did Walt's successors do about ten
years ago? When did Walt die? When did
Walt invent the mouse? When was
Steamboat Willy? It looked like the mouse
was about to enter public domain. And
Disney was terrified. They were afraid
everybody in the world was going to be
able to market their own mouse ears, that
they were going to be able to put it on t-
shirts; that they were going to be able to
make their own movies starring those
lovable animated characters that they'd
invested 100 years of goodwill and
financing into. So what did they do?
Student: Patent them?

Ben Malisow: That would have been really cool. All cartoon mice belong to us. No they weren’t able to do that. They changed the law. They lobbied for the law to be changed. Copyright law got extended I think it was 50 years, they kicked it out to 70 years. I think it’s gone up to 120 years justification being that these copyrighted works are more enduring with our recording systems and whatever it was. Basically they were afraid of losing their intellectual property and they have a very, very powerful lobby so they got the law changed. Copyright lasts for a long time. Good. Trade secrets, oh, I’m sorry, copyright. A couple things you can’t copyright just for giggles. You cannot copyright a title. Any of us could make a move called Star Wars. Any of us could write a book called Gone With the Wind. Just saying. Just putting that idea out there.
**Trade Secret**

**Trade Secret**

Proprietary business or technical information, processes, designs, practices, etc., that are confidential and critical to the business

Provides competitive advantage or equal footing

Must generally be not known and provide benefit to the company

Must be reasonable steps to protect its secrecy

Is not disclosed in legal proceedings

Can exist in perpetuity

**020 Okay.**

Student: Can't do an acronym right? Because we had that problem here.

Ben Malisow: What's that?

Student: You can't do an acronym?

Ben Malisow: No because it’s a title.

Student: Yeah. Right.

Ben Malisow: Exactly.

Student: It’s CERT's trademark but it doesn't stand for anything anymore.
Ben Malisow: Again the difference between CERT-

Student: Copyrighted.

Ben Malisow: No it's a trademark, it's a trademark. The difference between a trademark and a copyright, that's an excellent, excellent example.

**Copyright**

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Protects writings, databases, recordings, computer programs

Copyright is usually granted automatically to the creator

Protection is weaker than with patents, but much longer (70 years after creator’s death)

**019 What’s the difference between a Trademark and a copyright?**

Student: Trademark is more related to branding.

Ben Malisow: Yeah, it’s the visual. Me seeing those letters in that motif with that
thing on the top or having SEI with this graphic here, that's a trademark. I can never slap that on any slides that I want to sell or present to another institution unless I get permission to do so. The actual letters, if I want to put CERT on something, I can. C-E-R-T, it wouldn't be "the CERT". I could never claim that the things were related but I could use those letters again. Good, good, excellent point.

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**020 Trade secret. This is usually something that like it sounds it kept private to an organization and it's their business process. It's at the heart of what they do and it gives them a competitive advantage some way that they are distinct in the field. Unlike all the other
forms of intellectual property protection, it's not known and it's not disclosed in legal proceedings. It doesn't come up in the court. You don't prove what it is by documenting it. Why not?

Student: Because then it's no longer a secret.

Ben Malisow: Exactly. You lose this whole part of it. Exactly, exactly. Can anyone think of a good example of something that falls under the category of trade secret?

Student: The space shuttle which was compromised.

Ben Malisow: Unfortunately no, it was a government program so there's no market viability there. It's supposed to be public domain. It was national security was their secret, yeah, you're right, they ripped that off and made their own, didn't they?

Student: Uh-hum.

Ben Malisow: Good.

Student: Formula for Coke.

Ben Malisow: Formula for Coke is the classic example.

Student: Ha, it's the "classic" example?

Ben Malisow: Oh yeah. I wasn't even going there, but yes. Okay that's very good.

Student: They had a new example but-

Student: Yeah.
Ben Malisow: It didn't go over real well.

Student: Oh, ew.

Ben Malisow: Bill Cosby wasn't able to sell it. Recently in the past, I want to say three or four years, somebody tried to sell a formula for a certain particular kind of drink that Coke was going to make. Anybody remember this story? Vice President’s secretary had access to his safe. Bad idea. That was the Vice President’s fault. She got access to this formula of a new I think it was a non-caffeinated sports drink that was going to be sold overseas. She took it home. Both her brother and her cousin had the great idea, hey, let’s sell this to a competitor, we'll make lots of money. Lots of money is always a relative term. Does anyone know who they tried to sell it to and for how much?

Student: Pepsi and 20 grand.

Ben Malisow: You nailed it. You absolutely nailed it. Absolutely nailed it. Andy, you get all the candy. That’s just- I can’t believe you did that. That was very, very good.

Ben Malisow: Yeah. Where are they now?

Student: Jail.

Ben Malisow: Federal prison. What did Pepsi do as soon as they got the phone call?

Student: Called Coke?

Ben Malisow: Right before calling Coke?
Student: They called the authorities.

Ben Malisow: They called the FBI.

Student: Yeah.

Ben Malisow: Called the FBI right away. Why would Pepsi do that? I mean hey, they have the opportunity to beat Coke to the punch so to speak. Why would they do that?

Student: They want no dealings with that. It's bad blood between them. They don't want Coke doing the same thing to them.

Student: They're not trying to copy Coke necessarily.

Ben Malisow: All these reasons, yes, spot on. It's going to cost them more if they get tagged later on than any possible value of winning this thing, right? It could have been a sting. It could have been the FBI setting them up. It's best to call the FBI right away and say whoa, this deal is too good to be true, right? Yeah, good. Exactly. Unlike the rest trade secret does not expire. How old is Coke? Long time now, right? Good.
Growth of e-commerce has led to a series of relaxations in US export controls.

In 1996, commercial cryptography was transferred from the Munitions List to the Commerce Control List and software was separated in treatment from "technology" in the sense of Export Administration Regulations.

- This greatly simplified the export of commercial and open source software containing cryptography (which, in any case, a "rogue state" could have downloaded, and subsequently verified, from file sharing networks or servers outside the US).

**021 Questions on intellectual property, legal protections? Import expert control.** Because we do so much international business, because we become so dependent on it, because it’s such a flourishing and lucrative thing export controls have been relaxed.

Alright, there are still some export restrictions. Because we don’t want rogue states to have easy access to those things we want to force them to take first class air travel and go to Japan so they can visit Japan Disney while they’re there. Also some encryption items that are specifically designed for military use are also restricted and that’s not just true in export markets. It's also true in a
domestic market as well. What’s a Harris Triggerfish? It allows you to capture cell phone call data right out of the air from your closest cell tower. Can anyone buy them? No, you got to be law enforcement to get your hands on one of them. It’s not illegal to have one. It’s illegal to buy one.

**Trans-border Data Flow**

A single transaction may involve the laws of at least three jurisdictions

- the laws of the state/nation in which the user resides
- the laws of the state/nation that apply where the server hosting the transaction is located
- the laws of the state/nation which apply to the person or business with whom the transaction takes place

So a user in one of the United States conducting a transaction with another user in Britain through a server in Canada could theoretically be subject to the laws of all three countries as they relate to the transaction at hand.


**023 Transporter data flow. When you’re taking part in a transaction every step along the way you are susceptible to the laws of that country. This is a great example right here. I go and I want to buy something from British eBay and the server is in Canada. I am susceptible to laws of all three countries along that pathway. Can I ever be held liable for those things? Realistically are they ever
going to prosecute me? Yeah. Yeah. We did it. We did it to a British national flying from England to Costa Rica who had a layover in I want to say Saint Louis. Anyone know what we busted him for? What he was doing was not illegal in England. It was illegal here and users here were doing it. Anybody know what that was? Online gambling. Online gambling. He was a multimillionaire actually. I’m trying to remember which gambling outfit it was. Brent? Want to give it a shot? Google it? They met him at the layover, escorted him off the flight and actually put him in jail. He was under our laws when your users were using his services even though it wasn’t illegal there.
Licensing Issues

Piracy is a significant matter in this field.

Companies can face public humiliation, civil damages, or criminal prosecution for failing to respect copyrights.

There are various types of licenses, and every end-user license agreement (EULA) for software could be different.

Some audit programs exist, to identify and track unauthorized, unlicensed, and illegal instances of software in an environment.

**024 Licensing issues, why don't we want to use unlicensed software?**

Student: Carruthers.

Ben Malisow: Carruthers?

Student: David Carruthers?

Ben Malisow: Okay and what was his gambling service?

Student: Betonsports.com.
Trans-border Data Flow

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So a user in one of the United States conducting a transaction with another user in Britain through a server in Canada could theoretically be subject to the laws of all three countries as they relate to the transaction at hand.


Student: Also we could only get him because he was here.

Student: Yeah.

Student: Britain might be okay but-

Ben Malisow: We are still-

Student: Some nations would not give up their citizens.

Student: Yeah.

Ben Malisow: Yeah. We can ask for extradition.
Student: Right.

Ben Malisow: They might not cooperate, depending on what they feel-- they're supposed to. They're supposed to. Just because they don't recognize our laws doesn't mean-- just because their laws are different than ours, doesn't mean they don't recognize our laws.

Student: Right.

Ben Malisow: But sometimes you do. Have we ever gone and snatched somebody who broke a law that wasn't necessarily in an extradition country? Yeah. We've done that quite a bit. There was one even prior to 9/11. The FBI went and snatched a confirmed terrorist from Pakistan. They actually sent a team to the hotel he was staying at, grabbed him and dragged him home. Anyone remember what kind of hotel he was staying in? It was a Holiday Inn. I love that. That's like the he's an anti-American terrorist staying at the Holiday Inn. That's so awesome, that's so awesome.
Licensing Issues

Piracy is a significant matter in this field.

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Some audit programs exist, to identify and track unauthorized, unlicensed, and illegal instances of software in an environment.

**024 Why don't we want to use unlicensed software instances in our environment? Huge liability. Huge liability. This could be a disaster in and of itself. If you were given a cease and desist and you had to remove all the operating systems or all the applications from your systems and start over from scratch, if you weren't allowed by the vendor to just pay a penalty and carry on, that could crush you. I mean could you imagine trying to rebuild your entire network from scratch overnight? Be next to impossible. And there's criminal prosecution as well. Anyone ever been busted by the IRAA for downloading music illegally? I've had four students who have been. Two in middle school, high school, and two in
community college. I have not taught a lot of classes. I mean I'm not like Richard Dreyfus in Mr. Holland's Opus. I've only probably had over the years maybe 1,000 students, tops. For four to pop up that's a pretty significant number. It says to me that the IRAA is going about making examples. It wasn't a lot of money. It was between two and six thousand dollars per settlement per student, but it was enough that it was a pain in the neck for them and their families and that they're willing to stand up in the class and tell those stories. It's probably a pretty good fear factor in terms of marketing for the IRAA. Lots of different types of licenses and each kind of software can be different. Somebody name a type of license that's out there right now?

Student: Creative Commons.

Ben Malisow: Creative Commons one of the most popular right now. And of Creative Commons there's like a subset of another eight, right? What's good about Creative Commons?

Student: It's really good for protecting the rights of the owner for you. I mean it sets very much you can set and make it obvious in their what's allowed, what's not allowed, if they have to come ask you for permission first.

Ben Malisow: It's customizable.

Student: Yeah.

Ben Malisow: Yeah, yeah. From a creator's standpoint.

Student: And it's spelled out easily.
Ben Malisow: Yes, it allows them to tailor it in such a way that their end goals are met. What else is good about it? Quite often you put Creative Commons on something you want people to use. You're releasing into a wild and a much more permissive state than you would if it was just your usual copyright. It encourages creative use. Anyone ever heard of Jonathan Colton singer, does funny stuff, sand "Code Monkey”? No? He released all his music into Creative Commons. It allows people to make YouTube videos based on his music, allows people to rerecord his music. He does it as a marketing thing to get his name out there. Obviously it's not working that well but yeah, he wants to encourage propagation of his identity. What's bad about Creative Commons? What's bad about Creative Commons? There are so many flavors it's hard to know as a user necessarily what each one is going to be. Again, every single one is going to be different. Every way you want to use it is going to be different. Some of them say you can replicate this thing as much as you want. You can adapt it as much as you want right up to the point you're using it for commercial use. What's commercial use? That's going to be so hard to decide. I mean sometimes it's best to avoid using something it's going to- you're going to decrease the creativity you get out of it because you're afraid you're not going to be able to establish what those gray areas are. Has anyone ever read an entire EULA? Come on, don't you say "I agree" every time you- yeah?

Student: I had to for a security class.
Ben Malisow: I'm sorry, Gail. I would never do that to you. I would never do that to you. What's so painful about those things?

Student: Legalese.


Student: They're not short, either.

Student: No.

Ben Malisow: No they keep going. Why? What are they trying to do? What are they trying to do? Why is it so long?

Student: They're trying to specify everything.

Ben Malisow: Everything that could possibly in the world. In the event of alien invasion, this piece of software cannot be used for creating a virus to bring down the shield on the mother ship before Jeff Goldblum and Will Smith nuke it, right? Those things become their own worst enemies because again, people start to ignore them and usage, going back to common law, the courts after a while do kind of acknowledge usage, common usage as a standard. What's squatting? Not cyber-squatting but what's actual squatting on property?

Student: Oh this is a whole field of common law that gets really goofy. You essentially gain squatter’s rights in a place and eventual ownership. If you’re not paying to rent the space, you are using it-
Ben Malisow: Occupation. Yeah.

Student: And you are improving it more than the person that actually owns the space?

Ben Malisow: And again, there’s a whole bunch of different definitions of what that may or may not entail, but yeah, even if you don’t own it, if you get to sit there long enough you might be able to own it and the courts recognize usage like that. If people continue to ignore these things because they become so cumbersome and so ridiculous the courts may eventually say those don’t really exist or at least not in the intent you say they do. For right now they are enforcing it. For right now they recognize banners even though people just click right through on banners, “I agree”, “I agree”, “Continue”, whatever. The court still says by clicking you have agreed to it. So for now that is the case.

Student: I think they’re going to go very quickly through like the way shrink wrap licenses went, by opening this software, you acknowledge the EULA even though you haven’t read it or haven’t had an opportunity. I think they’re going to go that same way very quickly because most people don’t read them.

Ben Malisow: No.

Student: The common doesn’t, a prudent man wouldn’t.

Ben Malisow: Who has got the time?

Student: Exactly.
Ben Malisow: I mean honestly I like to think I'm a law-abiding citizen but realistically if I did that for every game that I played? I'd still be reading the instructions to Skyrim as opposed to playing Skyrim, right? Yeah. Good. There is third-party software that you can install and run on your system to inspect and see if it's there. There is also third-party software or vendor software that can be run on your system and see if something unlicensed is there that are proprietary that the vendors can use for an audit, that regulators can use, that law enforcement can use. Law enforcement has some really nifty tools. Anyone ever heard of Lantern or I think is it Predator or Raptor? The FBI has some really neat tools that can delve into areas that most people can't. Any questions about licensing, transporting data flows, import, export, and the intellectual property legal protections?
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