

Introduction to Intellectual Property

Chris Reedy

with material from Bill Hurd

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- Introduction to Intellectual Property
 - Copyrights for software
 - Morality of software copyrights
 - Chapter 4 of the text covers this topic in more detail
 - Make sure to read Chapter 4 before you do a presentation involving Intellectual Property

Kinds of Intellectual Property

- Trade Secrets
- Trademarks and Service Marks
- Copyrights
- Patents

Trade Secrets

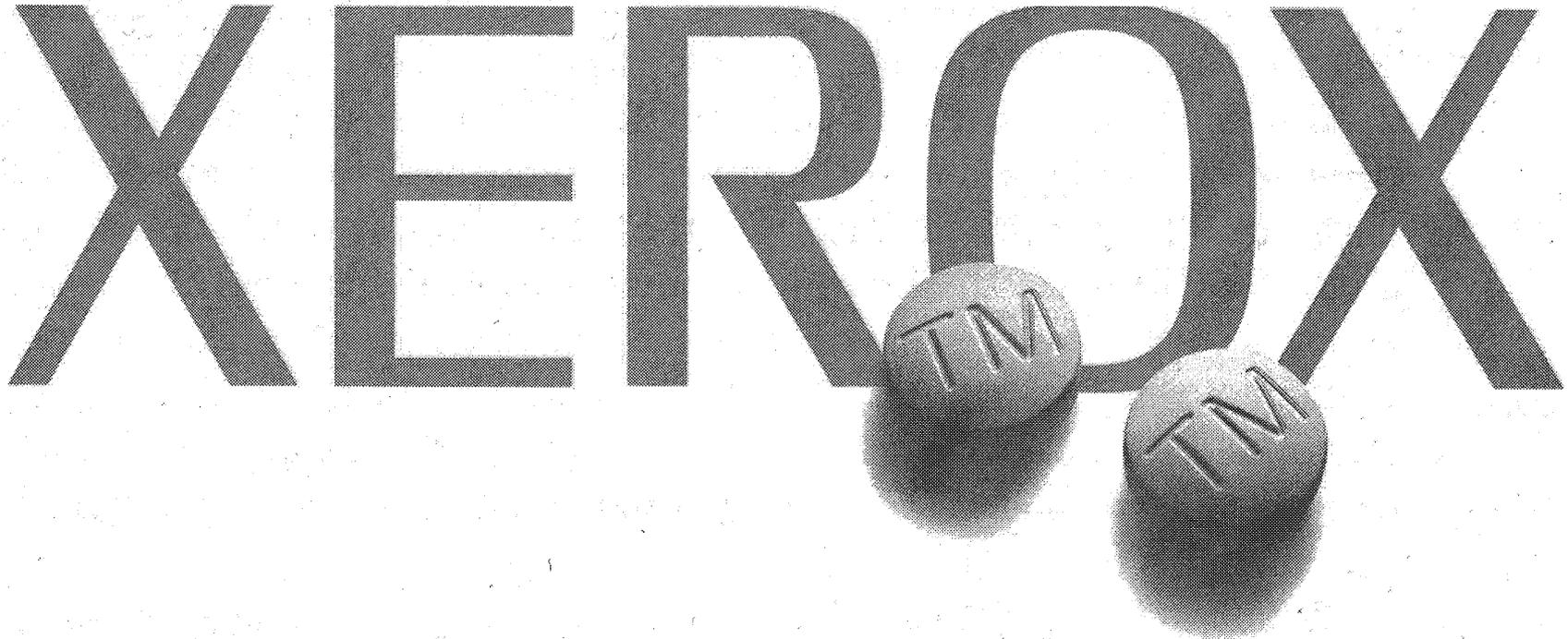
Intellectual property you choose not to reveal

- You must take active steps to keep the information secret
 - Secret information must be identified as such
 - People who receive secrets must be told they need to protect the information
- Advantage: No time limit
- Disadvantages
 - Information tends to leak
 - No protection if someone else duplicates work

Trademarks and Service Marks

- Protects the name of the product or service
 - Xerox, Windows
- Can lose protection if name enters common usage
 - Kleenex, Aspirin

FIGURE 4.4 Xerox Corporation ran this advertisement in *The Chronicle of Higher Education* as part of a campaign to protect its trademark.



When you use “Xerox” the way you use “aspirin,” we get a headache.
There’s a new way to look at it.

Boy, what a headache! And all because some of you may be using our name in a generic manner. Which could cause it to lose its trademark status the way the name “aspirin” did years ago. So when you do use our name, please use it as an

adjective to identify our products and services, e.g., Xerox copiers. Never as a verb: “to Xerox” in place of “to copy,” or as a noun: “Xeroxes” in place of “copies.” Thank you. Now, could you excuse us, we’ve got to lie down for a few minutes.

Patents and Copyrights

- U.S. Constitution (Article I, Section 8) gives Congress the power to ...
- “promote the Progress of Science and useful Arts by securing for limited Time to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”

Copyright

- Protects the expression of an idea
 - Idea: Boy meets girl, etc. etc.
 - Expression of idea: Romeo and Juliet
- Copyright owner can allow/restrict ability to make copies
 - Owner's rights limited by Fair Use
- Typical protection for software
- Does not protect against independent development

Patents

- Protects the idea
 - Protects against independent development
- “Detailed information” about the invention is placed in the public domain
- Idea must be new and “not obvious”

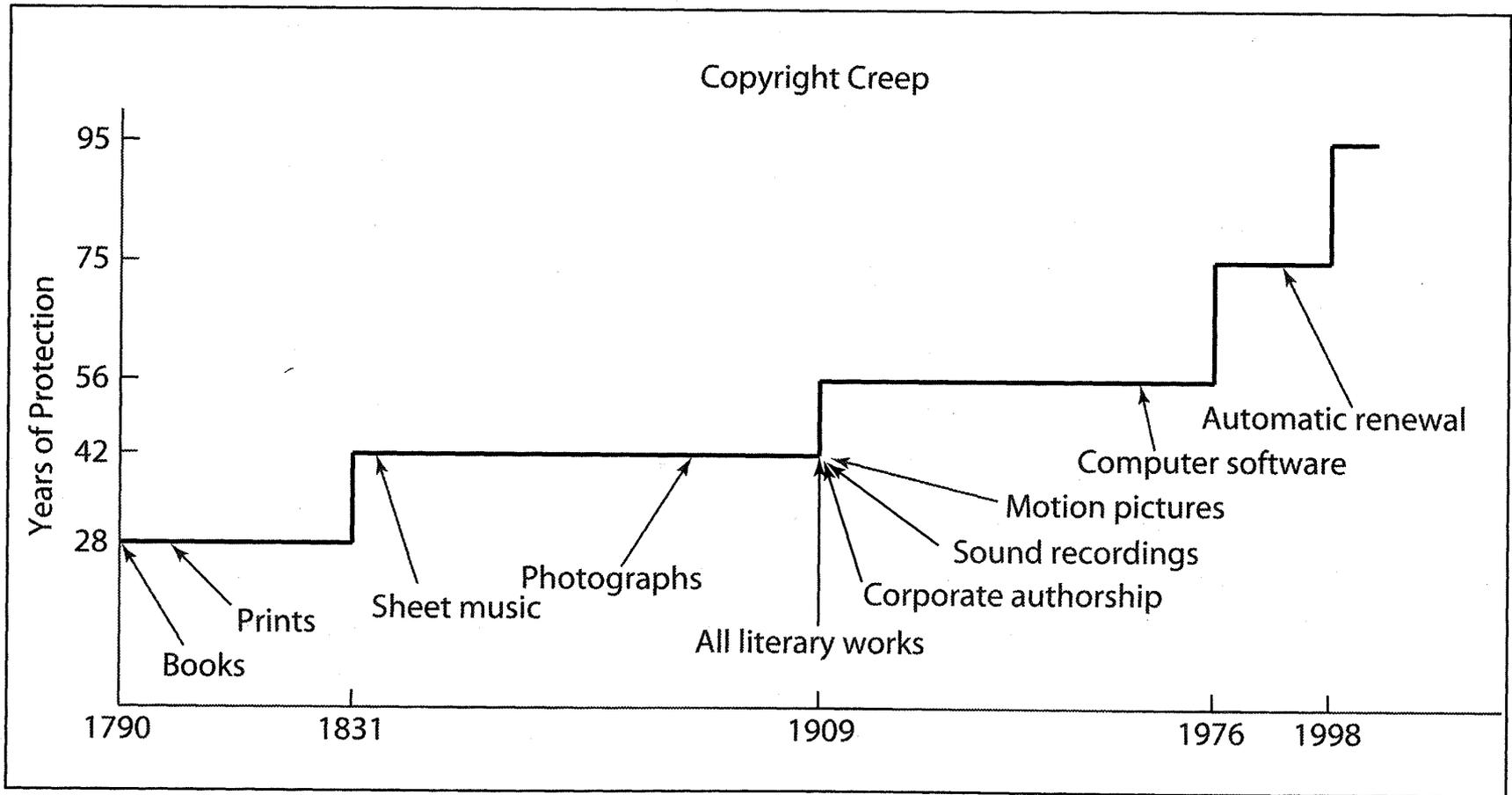
Aside: Is Intellectual Property Property?

- Ordinary property is exclusionary
 - If I'm driving your car, you can't
- Copies of ordinary property are still different
 - Two "identical" cars are still two separate cars
- Intellectual property??
 - Make sure to distinguish between the physical book and what's written in the book

Copyright law

- 1790 - original U.S. copyright law
- Covered books, maps and charts
- Unauthorized copies made illegal

FIGURE 4.5 Since the first Copyright Act was passed in 1790, both the length of copyright protection and the kinds of intellectual properties that can be copyrighted have grown dramatically.



Copyright for software

- In 1976 and 1980, copyright law modified to cover software
- Software considered a “literary work” like a book
- Authorship and ownership rights established for the companies that created the software

Aside: Work for Hire

- Creator of “Work for Hire” has no rights
 - Not considered author of the work
- If you are an employee what you do for your employer is automatically a work for hire
 - Microsoft owns the software its employees write
- If you are an independent contractor this is a contract issue
 - Only certain kinds of works can be works for hire

Fair Use

- Idea: Certain uses of copyrighted material are “fair” uses and do not require the copyright owner’s permission
- Legally complex concept
 - That is, if you really have to ask the question, you need a lawyer

Examples of fair use

- By law, making a backup copy
- By Supreme Court decision (Betamax), video taping a TV show and viewing it later (time shifting)
- Parody
 - The novel “The Wind Done Gone” is a parody of “Gone with the Wind” from the slaves’ point of view. As result of a law suit by Margaret Mitchell’s estate, it was determined that the novel was not a copyright violation.

Criteria for fair use

1. What is purpose and character of use?
 - Educational uses favored
- n What is nature of work being copied?
 - Non-fiction and published works favored
- n How much of the copyrighted work is being used?
 - Brief excerpts favored
- n How will the use affect the market for the copyrighted work?
 - Uses that don't affect market are favored

Argument for Intellectual Property Rights for Software

- Not everyone can program and programming is not easy
- A useful, working program can represent a lot of effort
- Authors of useful programs should be rewarded for what they produce
- Conclusion: they should own the program
- Implication: they can charge money for others to use the software

Second argument

- What would happen without protection?
- Purchases are reduced
- Less money to make new software
- Society will be harmed by the production of less software

Assertion

- Software copyrights are not intrinsically morally necessary
- Decision for each society/culture to make
- What would the society look like without them?
- Would we have more or less products?
- Would more or less people be employed producing software?

Copyrights are not morally necessary

- Societies have functioned for years without them
- Bach could not copyright his music
- The degree to which a society protects intellectual labor is a societal decision, not a moral decision

Copyrights are not morally necessary

Utilitarian argument is weak

- Lost revenue may be from people who would not have purchased anyway
- We cannot know lost revenue since it is not verifiable via experiment
- Creators tend to create, whether or not they own their creations
- Open source model may lead to more innovation over the long run, not less, it is impossible to say
 - Existing creative works provide additional raw material for new creative works

Conclusion

- Intellectual property rights should be respected because we have democratically agreed to, not because it is a moral requirement
- We can change the amount of protection a works get based on what we believe will be best for our society
- Other societies may choose different paths that they believe will be better for them