<table>
<thead>
<tr>
<th>Intellectual Property</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intellectual or creative work that can be owned by an individual, institution or company</td>
</tr>
<tr>
<td>Includes works of art, film, written texts and computer software</td>
</tr>
<tr>
<td>Protected by trade-marks, patents and copyright</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Trademarks</th>
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</thead>
<tbody>
<tr>
<td>Ensures that person or business can take advantage of commercial symbols</td>
</tr>
<tr>
<td>Protects brand name, corporate logo, advertising slogan</td>
</tr>
<tr>
<td>Territorial; depends on local trademark use or reputation</td>
</tr>
<tr>
<td>Must be registered; trademark holder can lose rights of trademark not used</td>
</tr>
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<table>
<thead>
<tr>
<th>Patents</th>
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</thead>
<tbody>
<tr>
<td>Grant exclusive rights to inventors to demand payment in form of royalties for manufacture, use, or sale of inventions</td>
</tr>
<tr>
<td>Applies to inventions—processes, machines, combinations of matter</td>
</tr>
<tr>
<td>Protects invention for up to 20 years</td>
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<table>
<thead>
<tr>
<th>Copyright</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applies to creative rather than industrial or commercial forms of IP</td>
</tr>
<tr>
<td>Can be CR without formal registration or payment</td>
</tr>
<tr>
<td>Protects rights of creator for up to 75 years after death of creator</td>
</tr>
<tr>
<td>Original works of art, music, writings, drawings, dances, computer programs</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>You can’t copyright...</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ideas</td>
</tr>
<tr>
<td>Concepts</td>
</tr>
<tr>
<td>Facts</td>
</tr>
<tr>
<td>Knowledge</td>
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</table>

<table>
<thead>
<tr>
<th>Rights of Copyrights</th>
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</thead>
<tbody>
<tr>
<td>Gives owners the right to reproduce, to create derivative works, to distribute copies of, to perform publicly, or to display original work of authorship for the duration of the author’s life + 50 years (70 in EU and 75 in US)</td>
</tr>
<tr>
<td>Exceptions: in Canada and US, government works not copyrightable</td>
</tr>
<tr>
<td>UK: govt. documents copyrightable</td>
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<table>
<thead>
<tr>
<th>Fair Use and Fair Dealing Concepts</th>
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</thead>
<tbody>
<tr>
<td>Fair Use (US)</td>
</tr>
<tr>
<td>Fair dealing (Canada)</td>
</tr>
<tr>
<td>Gives researchers, educators, and libraries special privileges</td>
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<table>
<thead>
<tr>
<th>Goal of CR</th>
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</thead>
<tbody>
<tr>
<td>Encourage authors/creators to invest effort in creating new works of art and literature</td>
</tr>
<tr>
<td>And not to deny others legitimate access to them</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>How to qualify for CR protection</th>
</tr>
</thead>
<tbody>
<tr>
<td>Works must be FIXED and ORIGINAL</td>
</tr>
<tr>
<td>Written on paper, etched in stone, stored on a computer file, recorded on audio or video tape</td>
</tr>
<tr>
<td>Professor’s comments to student not CR but written lectures are!</td>
</tr>
</tbody>
</table>
| Hmmmm,...websites??
Why is CR important for media industries?
- Primary method for protecting ownership rights
- Across a variety of media and platforms
- Convergence and globalization create new challenges
- Control over dissemination, monitoring, copying very difficult
- Plasticity and malleability of digital forms

Who Wants to Protect CR
- Large media firms
- Publishers
- Record companies
- Film studios
- Internet creates complexity...

Cliff Notes on CR and Historical Context
- Linked to development of printing
- Reaction to the fixity of printed works
- Turned creative acts into exchangeable property or commodities

In England...
- During the 1500s a printing monopoly was granted to a group of publishers so that the spread of politically 'dangerous' material could be controlled
- This monopoly lasted 150 years
- Govt. licenses necessary to operate printing presses
- Members received exclusive rights of books in exchange for loyalty to the Crown
- (see Ronald Bettig, Copyrighting Culture: The Political Economy of Intellectual Property)

Still in England...
- Lots of lobbying from printers and authors led to reforms in 17th and 18th century
- British Statute of Anne (1710) first real copyright law
- Granted authors exclusive right to authorize printing/reprinting of their works for a number of years
- Established main aspects of CR we recognize today...

Statute of Anne...
- Publishers can benefit from published works by retaining exclusive right to print and reprint books for a limited number of years...
- After which works pass into public domain

Canadian CR
- Legislation enacted in 1924
- Act not revised until 1988
- FTA in 1989 extended CR to include works transmitted by telecommunications
- Changed nature of cable distribution payment of royalty fees to CR holders>CDN cable operators thus liable for retransmission of US broadcast, satellite & cable signals

Bill C-32
- 1997
- Act to Amend Copyright Act
- Received Royal Assent
- Proclaimed law
- Now – new CR legislation to deal with digital technology underway-Copyright Reform-Industry Canada & Canadian Heritage

American CR
- 1790 first passed
- Amended frequently to reflect changes in technologies
- Copyright Act of 1976-extended protection to computer programs, literature, drama, performance, choreography, sculpture, graphics, sound recording, av works etc.
- All except for work produced by government employees, Acts of Congress, court opinions
<table>
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<tr>
<th>Digital Millennium Copyright Act (DMCA) 1998</th>
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<tbody>
<tr>
<td>• Controversial</td>
</tr>
<tr>
<td>• Addresses Internet issues</td>
</tr>
<tr>
<td>• Gives legal support to copy-protection systems, making it illegal to disable to circumvent anti-piracy measures built into commercial software</td>
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<thead>
<tr>
<th>DMCA</th>
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<tbody>
<tr>
<td>• Reduces liability of ISPs for copyright infringement in cases where they are simply transmitting other peoples’ information over the Internet</td>
</tr>
<tr>
<td>• Limits some aspects of fair use – raises possibility that linking on websites without prior permission may violate CR</td>
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<thead>
<tr>
<th>DMCA</th>
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<tbody>
<tr>
<td>• Requires ISPs to monitor user web sites for compliance with CR</td>
</tr>
<tr>
<td>• Webcasters required to pay license fees to record companies for disseminating recorded music on the Internet</td>
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<tr>
<th>CR in International Arena</th>
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<tbody>
<tr>
<td>• Universal Copyright Convention (signed by &gt;50 countries, protects work for life of author +25 years)</td>
</tr>
<tr>
<td>• Berne Convention (protects works for life + 50 years)</td>
</tr>
<tr>
<td>• Provides minimum standards for protection &amp; guidelines</td>
</tr>
<tr>
<td>• CR ultimate responsibility of each member state</td>
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<table>
<thead>
<tr>
<th>Berne Convention</th>
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<tbody>
<tr>
<td>• International treaty</td>
</tr>
<tr>
<td>• Adopted 1886 and revised a lot</td>
</tr>
<tr>
<td>• Most countries members</td>
</tr>
<tr>
<td>• Provides authors with same rights as national authors (Book published by Italian author enjoys in Canada the same protection as in Italy)</td>
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<tr>
<th>Other international (dis)agreements</th>
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<tbody>
<tr>
<td>• GATT agreed to reduce trade barriers in goods, services and IP</td>
</tr>
<tr>
<td>• WTO – Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) – supposedly strengthens CR protection internationally; critics contend it strengthens dominance of TNCs</td>
</tr>
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<thead>
<tr>
<th>WIPO</th>
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<tbody>
<tr>
<td>• World Intellectual Property Organization</td>
</tr>
<tr>
<td>• Governance forum of Berne Convention</td>
</tr>
<tr>
<td>• In 1994 extended CR protection to digital formats inc. Internet and digital storage of music and film</td>
</tr>
<tr>
<td>• DMCA = US compliance with WIPO Copyright Treaty of 1996</td>
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<tr>
<th>International Compliance</th>
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</thead>
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<tr>
<td>• Tricky and difficult</td>
</tr>
<tr>
<td>• China: lots of piracy</td>
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<thead>
<tr>
<th>How does © work?</th>
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</thead>
<tbody>
<tr>
<td>• A creator's original work is protected by copyright</td>
</tr>
<tr>
<td>• Creator doesn't have to pay a fee or register the work</td>
</tr>
<tr>
<td>• Copyright owners mark their work: Princess Smartypants, 2001 ©</td>
</tr>
<tr>
<td>• If work created by employee/contractor CR remains with employer who commissioned work unless otherwise agreed to</td>
</tr>
</tbody>
</table>
Moral Rights
- Creator maintains moral rights
- This the creator’s rights to have integrity of work respected
- Says no one can change the work without creator’s permission
- Ex: Michael Snow’s geese in Eaton Centre directed with Xmas wreaths
- Creators cannot transfer Moral rights to another
- But can waive rights when she transfers copyright
- Moral rights exist for lifetime of creator + 50 yrs., transfer to heirs

Extent of CR Protection
- CR owners have control over who can copy creation and for what purposes works are used
- Creators entitled to benefit financially — reprints, photocopies
- Licenses permit CR owners to let others use their work for $ (author can license film rights, paperback rights etc.) for a period of time

Selling CR
- Called an assignment
- McCartney tried to buy publishing rights to early Beatles' songs but outbid by Michael Jackson
- Some authors lose their shirts...

Compulsory Licenses
- Using CR works without license, but paying a set fee (royalty)
- Record companies have these licenses to collect royalties once CR owners has authorized someone to make a recording of their music
- SOCAN and COPYCAN collects royalties for creators

Duration of CR
- Life of creator + 50 years after death
- US-Sonny Bono Copyright Extension Act of 1998 – duration of CR extended to 75 years
- Bono Act came about because of extensive lobbying from film co’s like Disney who were about to lose CR on Mickey Mouse

Infringement of CR
- Reproduction, distribution, performance or display of any CR work without permission of CR owner or compulsory license
- Plagiarism
- Piracy

Fair Use and Fair Dealing
- Creates balance
- Rights of creators + reasonable public access
- Academic publications, classroom work
- Private study, research criticism, commentary, teaching
- University Coursepacks: must pay rights to copy

Betamax Case
- Sony Corp. of America v. Universal Studios Inc.
- Do viewers infringe CR by videotaping programs for later viewing?
- US Supreme Ct–home taping is fair use

Digital Media & CR
- CRTC won’t regulate
- DMCA
- iCraveTV.com — streamed TV signals over net w/out paying royalties/licensing fees. Retransmission legal in Canada but others outside Canada could link to Crave. iCrave sued by Big Cheeses for CR violation. iCrave shut down...
- MP3 and Napster.com
**Why CR?**
- Protects rights of individual creators
- Gives compensation to heirs
- Provides incentives for creators to produce work
- Stimulates innovation
- Benefits society

**Who profits from CR?**
- Creators?
- Corporations?

**Who gets harmed from CR?**
- Corporations?
- The public?
- Indigenous communities?

**Politics of IP-Boyle**
- Argues for a political economy of IP
- Compares it to development of environmental movement
- It’s a regime contentious in ideological, distributional and efficiency terms
- Lots of stakeholders
- IP key to central issues in information society

**Boyle...**
- Increasing homologization of all forms of information
- Decreasing proportion of product cost and intellectual attention paid to medium rather than message

**Boyle**
- Concerned about overt commercialization & corporatization of info
- Indigenous property rights
- Human genome/genetics
- Privatization of public life
- Pay-as-you-go architecture on the net

**New Conundrums in CR**
- Deep Linking
- Open Source
- Anti-circumvention (DMCA) and DeCSS trial
- MP3 and Napster

**Creative Commons**
- Share, reuse and remix - legally
- Creativecommons.org
- Nonprofit international
- Creativecommons.ca
- Check out CIPPC: [www.cippic.ca](http://www.cippic.ca)
- McGill’s Centre for IP Policy: [www.ipp.mcgill.ca](http://www.ipp.mcgill.ca)

**IP and Developing Countries**
- Critique of TRIPs (trade-related IP)
- Assault on indigenous knowledge
- Biopiracy
- Threats to biodiversity
- TRIPs reform
The Problem with Patents
- Mania in patenting everything
- Western conception of property: market orientation
- "The Private Plunder of Our Common Wealth" (David Bollier)
- Inhibition of creativity
- Plunder of indigenous knowledge

Western Patents Lobby Contends...
- Patents good for growth, maintenance of free & competitive market
- Stimulates investment - foreign direct investment (FDI)
- Stimulates technology transfer North>South (inventors can recoup R&D costs)

Shiva contends that patents...
- Patents used for political coercion
- Regulates technology development, rather than stimulating it
- Correlation between investment & IPR shaky
- FDI in hands of small number of companies
- Government sanctioned monopoly

Conflicts
- Private interests vs. public interests
- Western economic system vs. indigenous gift economy
- Intellectual property vs. intellectual piracy
- Ecological sustainability vs. ecological plundering

The Political Economy of Patents
- Privatization of research in labs & academia
- Conglomeration of life-sciences corporations
- Concentration in Western countries
- 1998 stats: $23B seed industry; $297B pharmaceutical industry; $17B veterinary industry; $31B pesticide industry

Winners & Losers
- Indigenous technology pirated & patented by IPR systems
- Developing countries losing money in unpaid royalties for their agricultural seeds & plants
- Patent system drains technology & wealth from South>North
- TRIPs exacerbates everything...

TRIPS - trade related aspects of intellectual property rights
- International agreement on IP
- Added to GATT at end of Uruguay Round in 1994
- Trade policy linked to IP regime
- GATT=WTO
- Ratification of TRIPs compulsory requirement of WTO membership
- Any country that wishes to obtain access to markets opened up by WTO must adhere to TRIPs

TRIPS
- Enforcement mechanism: dispute settlement mechanism can authorize trade sanctions against those countries that don’t adhere to TRIPs

TRIPS=strong IP
- CR=50 years after death of author
- Computer programs regarded as literary works & protected
- National exceptions constrained
- Patents granted in all fields of endeavor
- National Treatment - may not offer benefits to local citizens which are not available to citizens of other signatories
- Most favored nation clause
**national treatment** principle states that if a nation grants a particular right, benefit or privilege to its own citizens, it must also grant those advantages to the citizens of other states which are participating in the agreement.

**most favoured nation clause** is a clause in a trade agreement between two nations providing that each will extend to the other any trading privileges it extends to third nations.

**TRIPS**
- Extends patent rights for 20 years (trade restrictive measure - gives monopolistic marketing rights to corporations)
- Plant varieties inc. seeds can be patented (ownership & control from small farmers to MNCs)
- Micro-organisms (human/animal cells) can be patented
- Pharmaceuticals can be patented

**Patenting of Plants**
- Shifts from ownership by small farmers to large MNCs
- When corporations patent seeds, farmers must pay for annual fees to use seed types, even if seed was product of years of breeding in community
- Patents on soybeans, corn, canola
- Ex: Monsato’s Round-Up-Ready Gene Agreement
- Terminator Technology

**Patenting of Life Forms**
- "Gene constructs" & biotechnological inventions
- Patents for 20 years, covering future generations
- Human and animal cells

**Seed**
- Free exchange basis of biodiversity & food security
- Gift economy - commons
- Exchange of knowledge, culture

**Agricultural Patenting**
- Encourages monopoly control by MNCs
- Promotes agribusiness
- Royalty payments force seed costs to increase
- Livelihood of farmers in peril
- Undermines food security
- Countries more in debt

**Patenting of Life Forms**
- "Gene constructs" & biotechnological inventions
- Patents for 20 years, covering future generations
- Human and animal cells

**Biopiracy**
- "Use of intellectual property systems to legitimate the exclusive ownership and control over biological resources, products and processes that have been used over centuries in non-industrialized culture"
- Patent claims over biodiversity & indigenous knowledge
- Knowledge usurpation by corporations

**Biopiracy**
- Western bias against other cultures
- Supremacy of Western science
- Appropriation of Indigenous knowledge
- Indigenous knowledge systems transferred to western knowledge systems are thus treated as innovations

**Biopiracy**
- Indigenous plants, indigenous medical knowledge, homeopathics being patented by western bio-pharmaceutical TNCs
- Case of Grace Corp. and neem in India
- What are the ethics of such biopiracy?

---

**“Stealing from the pharmacy of the poor”**
- Indigenous plants, indigenous medical knowledge, homeopathics being patented by western bio-pharmaceutical TNCs
- Case of Grace Corp. and neem in India
- What are the ethics of such biopiracy?
Exploiting public health issues

- Pharmaceutical industry
- Case of producing low-cost AIDS drugs