Copyrights and Patents

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Agenda

- Overview of Intellectual Property
- Copyright Basics
- Copyright Policy
- Patent Basics
- Duke’s Office of Licensing and Ventures
- Questions
Overview of Intellectual Property

- Trade Secrets
- Trademarks/Trade Dress
- Copyrights
- Patents
Overview of Intellectual Property

- **Trade Secrets**
  - Protects against the misappropriation of certain confidential information
  - Types of information protected: very broad - business or technical information of any sort
  - No expiration
Overview of Intellectual Property

- Trademarks/Trade Dress
  - Purpose: to protect consumers from people trying to use someone else’s identifying symbol
  - Trademarks protect words, symbols, and other attributes that serve to identify the nature and source of goods and services
  - Examples include: corporate and product names, symbols, logos, slogans, pictures and designs, product configurations, colors, and even smells
  - ™ for unregistered trademarks
  - ® for registered trademarks
What is a Copyright?

- Copyright is protection provided by law to authors/creators of “original works of authorship,” expressed in any tangible medium.
- Protection is available for original works the moment they are created and expressed in a tangible medium.
- Applies whether they are published, unpublished, or registered with the US Copyright Office.
Copyrights

- Copyright ownership and protection are available if three requirements are met:
  - Fixation (work exists in a medium from which the author’s expression can be read, seen, or heard, either directly or by the aid of a machine)
  - Originality
  - Minimal creativity
Copyrights

- What can be Copyrighted?

- Original works* of authorship:
  - Literary works
  - Musical works
  - Dramatic works
  - Pantomimes and choreographic works
  - Pictorial, graphic and sculptural works
  - Motion pictures and other audio-visual works
  - Sound recordings
  - Architectural works

*Categories should be viewed broadly (e.g., computer programs = literary work; maps/architectural plans = pictorial, graphic and sculptural works)
Copyrights

What Can’t Be Copyrighted?

- Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, devices, or facts (as distinguished from a description, explanation or illustration)
- Discoveries, formulas or inventions
- Useful articles
- Titles, names, short phrases, or slogans
- Works lacking a “modicum of creativity”
  - Listings of ingredients or contents
  - Works consisting entirely of information that is common property and contains no original authorship (e.g., standard calendars, height and weight charts, etc.)
- Works for which the copyright has expired
- Works federal government employees create within the scope of their employment
- Works clearly and explicitly donated to the public domain
- Works that have not been fixed in a tangible form of expression
Copyrights

- Rights of the Copyright Owner
  - Reproduction
  - Creation of Derivative Works
  - Distribution
  - Display/Public Performance
Copyright Registration

- Registration is simple, but not automatic
- Advantages of registering:
  - Prerequisite to lawsuit
  - Establishes public record of claim
  - Eliminates “innocent infringement defense”
  - Availability of broader remedies if registration is made before infringement or within 3 months of publication
Copyrights

• Copyright Duration:
  • Author’s life + 70 years
  • Works made for hire: Shorter of 95 years from publication or 120 years from creation
  • Published before 1923: public domain
Copyrights

- Proper notation for Copyright notice
  - Symbol ©, “copyright” or “copr.”
  - Year of publication
  - Name of owner

- Examples:
  - Copyright 2011 John Doe
  - ©2011 John Doe
Duke Intellectual Property Policies

- Duke Intellectual Property Policy (covering Patents and Copyrights) are found at the Office of the Provost website [http://provost.duke.edu/policies/index.html](http://provost.duke.edu/policies/index.html)

- Patent specific policies are titled Policy on Inventions, Patents, and Technology Transfer (pages 7-12)

- Copyright specific policies are titled Duke University Policy on Intellectual Property Rights pages (13-21)
Duke Copyright Policy

- **Reaffirms personal ownership of copyrights** by the individual creators (faculty, staff, students)

- Exceptions (owned by Duke)
  - Computer programs
  - Data bases created on behalf of departments or which require approval by the Duke IRB or involve privacy
  - Works created by extraordinary allowances, grant or subventions when identified in advance by the University
  - Collaborative works by persons working together when individual contributions are indistinctly merged into a new and distinct work where the authors have not entered into an agreement with respect to joint ownership
  - Copyrights arising from grants or contracts are subject to the terms and conditions of those grants or contracts
What are Patents?

- Grants you the right to exclude others from practicing your patent rights
- Does not give you freedom to practice these rights
- Scope of your rights are determined by the claims
- To get a patent, you must apply to United States Patent and Trademark Office (or foreign equivalent)
- Expires 20 years after initial filing date
- After term expires, the innovation becomes part of the public domain, freely available to all.
Patent Criteria

- Applies to processes, machines, and compositions of matter (methods, systems and/or products)

- Invention must meet four requirements:
  - novel,
  - nonobvious,
  - not disclosed
  - useful
What is a Public Disclosure

Disclosure happens when enabling information is:

- **verbally** presented or discussed
- **written** – in print or online

Common public disclosure forums:
- posters, abstracts
- seminars, theses
- funded grants, grant applications (if made public)
- manuscripts
- press releases, interviews
- discussions with anyone outside Duke
Duke Patent Policy

Article V. of the Duke University Policies on Inventions, Patents, and Technology Transfer

The **University owns** all inventions of University personnel and students that are made as a part of or as a result of:

a) University research;
b) activities within the scope of the inventor's employment by, or in official association with, the University; and
c) activities involving the use of University time, facilities, staff, materials, University information not available to the public, or funds administered by the University.
Duke Patent Policy

Inventions developed while someone is employed by the University or is a student at the University must be disclosed, even if the inventor believes the University does not own the invention.

Disclosure is confidential and DOES NOT mean the University will own the invention.
Duke Office of Licensing & Ventures

- Executive Director – Rose Ritts
  - Licensing—6 Associate Directors and 1 Licensing Analyst
  - Patents –1 Associate Director and 2 full time staff
  - Agreements Manager
  - Information Technology—3 full time staff
  - Finance/Administration—1 Director and 6 full time staff
Patent is the grant from the government previously described

IDF is a confidential document required under university patent policy to initiate evaluation, patent protection and commercialization of your invention.

(http://olv.duke.edu/Inventors/Forms)
Duke OLV

- Intellectual Property Assessment of Invention Disclosures
- Market Assessment of Invention Disclosures
- Patent Filing & Management
- Financial Management
- Government Compliance
- Marketing
- License/Option Negotiations
- Innovation Mining
- VC-funded start-ups
- Network of company contacts and funding

*OLV is not responsible for IRB protocols, IACUC protocols, Corporate Sponsored Research, Clinical Trials, Material Transfer and/or Confidentiality Agreements, Conflict of Interest, Research Integrity, Grants, etc...
License agreement provides a commercial partner (licensee) with the limited right to practice the patent rights to develop products and/or services.

*Duke retains ownership of the patent rights and the right to practice the patent rights*
Duke University Licensing

- Licensing Terms include:
  - Exclusive vs Nonexclusive
  - Fees (i.e. upfront, annual, milestone and recovery of patent expenses)
  - Royalties
  - Sublicensing
  - Patent right enforcement
  - Due diligence
  - Indemnities
  - Compliance
  - Insurance/government approval requirements
What do I do if I develop a patentable invention or copyright that has commercial value?

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