Course Description:

This course provides an overview of the United States’ system of intellectual property protection, with a particular focus on the issues raised by the Internet and the development of digital technology. The class is a survey course, which will cover the three main federal branches of intellectual property law – Copyright, Trademark, and Patent – as well as a number of state law issues that regulate intellectual property – trade secret, right of publicity, appropriation, and contract (e.g., licensing). This course thus serves as introduction to this area of the law and as a complement to the other intellectual property courses offered at CU – and not as a substitute for them. For students seeking merely a broad exposure to intellectual property issues – particularly with an Internet focus – this class will provide a solid overview of the topic, but the aim of the class is to encourage students to pursue additional offerings in the field.

Class Times and Office Hours:

The class will meet every Tuesday and Thursday from 8:30-9:45. I will generally be available for office hours on Tuesday and Thursday mornings from 10:00 to 12:00 in Room 313. I also can be reached via email at phil.weiser@colorado.edu.

Course Expectations:

Grades for the course will be based on the final, a class project, an optional research paper (if completed), and class participation. Class participation and preparedness are an important part of this course; students will be eligible for an increase/decrease in their grade based on their readiness to answer questions and their performance during an “on call” week. Students will be asked to sign up to be “on call” during two weeks of the semester. For those weeks, students will be called upon frequently and, in some cases, will be responsible for having read certain optional readings. During each class, students may also be called on at random to ensure that the class discussion remains focused on areas that are not well understood. This possibility is meant to be a policy of last resort. Hopefully, students will ask questions when they do not understand a subject and obviate the need for such a step.

During week 12 of the course, students will participate in a group project. In particular, the class will be divided up into groups of nine and will deliberate over a current intellectual property case pending at the Supreme Court (either Eldred or Victoria’s Secret). On the Tuesday of that week, students will deliberate in their groups; on the Thursday of that week, each group shall present their judgment and the class will discuss the case. Each student will be required to write an opinion in that case – not necessarily a majority opinion, but a concurring or a dissenting statement. These statements should be around five pages and, as an absolute maximum, no longer than ten pages. Each student opinion will comprise 1/5 of the course grade and will be due on Thurs, Dec 7th. (Every day late will result in a 3 point markdown.) Finally, students also have the option of (and are encouraged to) write a paper that will count for 2/5 of their grade, provided that the student does better on the paper than on the final exam (which will count for the other 2/5 of their grade). All such papers are due on December 7th. If a student would like to hand in a first draft for review, those drafts are due on November 16th. If the student chooses not to write such a paper, the final exam will comprise 4/5 of the grade. Effective class participation can result in a maximum of a 3-point bonus.

Course Materials:

The course will be taught from both a casebook, Merges, Menell, Lemley & Jorde, Intellectual Property In The New Technological Age (2d 2000) (“CB”), as well as a number of
supplemental materials that will be available on the Westlaw Educational Network (TWEN).

You will note that the syllabus, which lists the reading by each week, separates the reading for each class: (1) for the Tuesday class; and (2) for the Thursday class. In addition to the assigned readings, students should also read the Monday Business section of the New York Times, as it reports on the information industries (same–day issue available on the Web at: http://www.nytimes.com; on Westlaw: NYT database; on Lexis: NEWS lib., NYT file).

Week 1: Introduction and Right of Publicity (Aug 27th and 29th)

A. Required Reading
   (1) Overview of the Intellectual Property Regime (CB 1-28)
   (2) Vanna White v. Samsung (dissent from denial of rehearing en banc) (835-850)
       Dustin Hoffman v. Capital Cities/ABC, Incorporated, 255 F.3d 1180, 1184 (9th Cir. 2001).

B. Concepts
1. Public good nature of IP – (a) non-excludable; and (b) non-rivalrous.
2. Justifications for IP – (a) incentive theory; (b) marketplace of ideas/democracy; and (c) natural rights perspective
3. Non IPR incentives for production
4. Trade secret and contract-based protections
5. Patent – (a) 4 reqs (patentable subject matter, novelty, non-obviousness, and usefulness) (b) administered by Patent & Trademark Office
   © Broad protection, limited in duration (up to 20)
6. Copyright (a) original expression, not ideas
   (b) registration with Copyright Office; solely back-end scrutiny
   © narrower protection (fair use exception), longer terms
   (d) touchstone is substantial similarity
7. Trademark (a) words, symbols, and attributes that identify nature of a good
   (b) administered by PTO
   © maintain protection as long as used
   (d) touchstone is likelihood of confusion
8. Public Domain
9. First Amendment interests

UNIT 1: Trade Secrets and Patent Law

Week 2 (Sept 3rd and 5th): Trade Secrets

A. Rockwell Graphics Systems, Inc. v. DEV Industries, Inc. (pp. 49-58); Note on Fencing Costs and Trade Secrets (58-61); duPont v. Christopher (66-71); Chicago Lock Co. v. Fanberg (from 77-83).

B. Issues relating to employees (84-95); Agreements to Keep Secrets (107-117).

Concepts:
1. Restatement definition: “A trade secret is any information that can be used in the operation of a business or other enterprise and that is sufficiently valuable and secret to afford an actual or potential economic advantage over others.” Restatement (Third) of Unfair Competition Sec. 39.
Week 3 (Sept 10th and 12th):  Patent Law I

A. Overview (131 –137); Patentable Subject Matter (Section 101) (Chakrabarty) (138-146)
   Business method patents (State Street – 1033-1040); Nonobviousness (Graham v. John
   Deere Co.) (195-207); Note on Secondary Considerations (215-17).

B. U.S. Patent No. 5,960,411 (issued Sept. 28, 1999)., Method and System For Placing A
   Purchase Order Via A Communications Network, assigned to Amazon.com, Inc. (“Click-
   (http://www.oreilly.com/cgi-bin/amazon-patent.comments.pl)
   O’Reilly, Tim. “My
   Conversation with Jeff Bezos” March 2, 2000

Week 4 (Sept 17th and 19th): Patent Law II

A. Literal Infringement (pp. 250-55) & Doctrine of Equivalents (Warner-Jenkinson Co.) (pp.
   262-273); Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd., 122 S.Ct. 1831
   (2002).


UNIT 2: Trademark, State Law Protections, and New Protections

Week 5 (Sept 23rd (at 12:00) & Sept 24th): Trademark I

A. Background and Overview of Trademark Law (557-567); Quality Co. v. Jacobson (568-
   574); Note On Geographic Limitation on Trademark Use (628-631)

B. Zatarain’s Inc. v. Oak Grove Smokehouse, Inc. (579-592); Two Pesos, Inc. v. Taco
   Cabana, Inc. (592-598); Park N’ Fly v. Dollar Park and Fly (660-668).

Week 6 (Oct 1st and 3rd): Trademark II

A. AMF v. Sleekcraft Boats (680-689); Nabisco, Inc. v. PF Brands, Inc. (697-712); Major
   League Baseball Properties, Inc. v. Sed Non Olet Denarius, Ltd. (753-761)

B. New Kids on the Block v. News America Publishing, Inc. (768-772); LL Bean, Inc. v.
   Drake Publishers, Inc. (772-778); Sporty’s Farm L.L.C. v. Sportsman's Mkt., Inc. 202
   F.3d 489, 493 (2d Cir. 2000).

Week 7 (Oct 8th): State Protection and Preemption

A. INS v. AP (796-810); Bonito Boats, Inc. v. Thunder Craft, Inc. (861-867)

Week 8 (Oct 15th and 17th): Additional Protection By Contract and “Digital Locks”

A. ProCD  v. Zeidenberg, 86 F. 3d 1447 (7th Cir. 1996)

B. Restrictions on Digital Piracy (488-489)
   Digital Millenium Copyright Act (973-976)
   Testimony On Digital Piracy – (a) Parsons
   (http://www.senate.gov/~judiciary/testimony.cfm?id=197&wit_id=259); (b) Eisner
   (http://commerce.senate.gov/hearings/022802eisner.pdf); and (c) Vasquez
   (http://commerce.senate.gov/hearings/022802vasdasz.pdf)
UNIT 3:Copyright I  
Week 9 (Oct 22\textsuperscript{nd} and 24\textsuperscript{th}):  
A. History and Overview (345-356); Feist Publications v. Rural Telephone Service (356-363)  
B. Fixation and Formalities (364-374); Baker v. Selden (375-382); Morrissey v. Proctor & Gamble and Notes (382-385)  

Week 10 (Oct 29\textsuperscript{th} and 31\textsuperscript{st}): Copyright II  
A. The Domain and Scope of Protection (399-409); CCNV v. Reid (414-432)  

Week 11 (Nov 5\textsuperscript{th} and Nov 7\textsuperscript{th}): Copyright III  
B. Sony v. Universal Studios (501-07); A&M Records, Inc. v. Napster, Inc., 239 F.3d 1004 (9th Cir. 2001).  

Week 12 (Nov 12\textsuperscript{th} and Nov 14\textsuperscript{th}): Eldred and Victoria’s Secret  
B.  

UNIT 4: PROTECTION OF COMPUTER SOFTWARE  
Week 13 (Nov 19 & 21\textsuperscript{th}):  
A. Intro (893-902); Copyright (911-939) (Whelan and Altai)  
B. Lotus (941-957); Lewis Galoob v. Nintendo (977-981); Sony Computer Entertainment, Inc. v. Connectix Corp., 203 F.3d 596 (9th Cir. 2000).  

Week 14 (Nov 26\textsuperscript{th}):  
A. Patentability of Software (1007-1033)  

Week 15 (Dec 3\textsuperscript{rd} and 5\textsuperscript{th}):  
A. Sui Generis Protection (1084-1100)  
B. Review