Intellectual Property
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Intellectual Property

Any intangible asset that consists of human knowledge and ideas.

Most such assets cannot be recognized on a balance sheet when internally generated, since *it is very difficult to objectively value intellectual property assets*. They can, however, be included in a balance sheet if acquired, which allows a more accurate valuation for the asset (that is, the acquisition cost).
Common forms of IP

- Patents
- Copyrights
- Trade secrets
- Trademarks
- Contracts
Cray XT Software IP includes...

- **Internal Cray IP**
  - Hardware management patents
  - Proprietary cluster management software
  - Apprentice2™ performance tool

- **External IP, with fees**
  - Catamount OS, Sandia National Lab
  - C, Fortran compiler, PGI
  - Totalview parallel debugger, Etnus
  - PBS Pro batch management tool, Veritas

- **External IP, without fees**
  - Linux
  - PAPI
  - gcc, gdb

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403 Project IP includes …

- Prototype libraries
- GEMS
- .Net framework
- Mail library
- Mysql
- Own IP
Who owns the IP of University projects?

- In the US, inventors traditionally own their inventions, although universities most often share the monetary returns from commercialization.

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- CSE commercialization committee
  http://www.cs.washington.edu/commercialization/
- UW office of technology transfer
  http://depts.washington.edu/techtran/

- Key question is, “who is funding the work?”
Patents

- **Protect**: innovations (processes, machines, products, phrases, algorithms…)
- **Protect against**: others making, using, selling innovation, *even if they independently came up with it*
- **Requirements**: novel, useful, non-obvious
- **Term**: 20 years from filing – typically must file within a year of being publicly disclosed
- **Cost**: relatively high, in time and cost
- **How could you limit the risk of infringement?**
Patent ruling a win for eBay

• Patent on “Buy it Now” sales feature held by MercExchange and used by eBay
• MercExchange sued for patent infringement
• Supreme Court pushing back to lower court, but until decision, allows eBay to continue using the phrase
• Concern by court of large corporations held hostage to minor innovations (patent trolls)
Microsoft MP3 patent row looms over Apple

- Court ruled that Microsoft infringed on 15 patents owned by Alcatel-Lucent relating the MP3 music format (MP3 playback) in Windows Media Player.

- Alcatel-Lucent had argued it co-developed the technology with Germany’s Fraunhofer Institute (FI). MS licensed through FI (for $16M) but not also Alcatel-Lucent.

- Damages were $1.52 BILLION. Microsoft will appeal.

- Bad news for Apple? itunes to ipod - dependency on MP3 technology.
Lucent accused of violating patents

- Lucent sued Dell/Gateway for patent infringement on innovations including controlling a computer with a stylus.
- MS pledged to cover Dell/Gateway customer costs, filed to invalidate the patents or resolve that not infringed.
- Lucent sued MS for infringement on video decoding technology.
- MS countered with claim that Lucent infringed 10 of its patents.
War chests

Companies like to build a war chest of patents for just this reason (use aggressively or defensively)
CSR settles Bluetooth dispute with WRF

- **UW** has 4 patents on technology (by an ugrad!) that appears to be used by cellphone manufacturers under the “Bluetooth” technology name.

- Bluetooth technology is used in wireless activities – exchange info without wires – there are a number of patents surrounding the technology.
• Washington Research Foundation (WRF) working on behalf of UW reached a licensing agreement with Broadcom, who uses the Bluetooth technology

• CSR (another cellphone manufacturer) did not want to license the technology. WRF filed a suite against CSR for patent infringement

• April 2007, CSR settled with WRF for $15M but remains to believe the suite was without merit
Copyrights

- **Protect**: expression of ideas on a tangible medium, *not* the ideas
- **Protected against**: reproduction, copy distribution, derivative work creation (NOT *independent* creation of the same or similar work)
- **Requirements**: original work, fixed in tangible form
- **Term**: author’s life + 70 years
- **Cost**: simple, no registration
- **How could you limit the risk of infringement?**

The fact that internally developed SW looks or performs like SW that is owned by others but accessed by internal developers may raise a question of copyright infringement.
More facts on copyright

- Almost all things are copyrighted the moment they are written; No notice is required.

- Copyright software – contracts/licenses can provide permission to use copyright material.

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Trade Secrets

- **Protect**: concept, idea, info, or innovation
- **Protected against**: misappropriation (*NOT* independent creation of same work)
- **Requirements**:
  - info not generally known or available
  - company derives some value from secrecy
  - must spend reasonable effort to maintain secrecy
- **Term**: no predefined limit
- **Cost**: no registration or examination
- **How could you limit the risk of misappropriation?**
Symantec suit targets Vista

- Symantec said that Veritas shared Veritas trade secrets and even trained Microsoft engineers as the companies began working together. And Microsoft used those trade secrets to start developing products [aspects of Vista] that directly competed with Veritas' offerings, the lawsuit said.
- Microsoft said that in 2004 it bought from Veritas the rights to the technologies in question.
Trademarks

- **Protect**: “any word, name, symbol, or device, or any combination thereof” used to distinguish certain goods from others
- **Protected against**: others using the mark, likelihood of confusion and dilution
- **Excluded**: use in other industries / geographic areas
- **Requirements**: use the mark in commerce or register with intent to use in future, must maintain quality control over goods
- **Term**: 10 year renewable (no upper limit)
- **How could you limit the risk of infringement?**
Are any of your project names TM?

http://tess2.uspto.gov/

<table>
<thead>
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<th>Company</th>
<th>Description</th>
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<tr>
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<tr>
<td>Foresee</td>
<td>Foresee PHP, Foreseehome, Foresee Results, Foresee 2 (HR, Marketing), Foresee, alone, dead</td>
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<tr>
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<td>Umail (communication by mobile phones)</td>
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<td>Ofcourse (employee leasing/payroll services) Ofcourse.com (software for delivering educational coursework through the internet)</td>
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<td>Notepad (Polaroid: sensitized photo film), audio notepad, mi-notepad, edi notepad, notepadpc,</td>
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Apple infringes on Cisco’s iPhone TM

- **Cisco** owns the iPhone trademark
- **Apple** started negotiations with Cisco to share the TM. Cisco wanted open approach to allow Apple iPhone to be compatible with other companies’ products
- Apple announced its iPhone *before* an agreement was made
- Cisco sued Apple for trademark infringement

“This lawsuit is about Cisco’s obligation to protect its trademark in the face of a willful violation. Our goal was collaboration. The action we have taken today is about not using people’s property without permission.”

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How did the saga end?

- Cisco and Apple reached a settlement (2/21/07). The two companies pledged to "explore opportunities for interoperability in the areas of security, and consumer and (business) communications."

- Other terms were confidential