

**Ch.2**

**The Ethical Point of View**

- **Most everyone shares “core values”, desiring:** Life & Happiness & Ability to accomplish goals
- **Two ways to view world** **Selfish point of view:** consider only own self and its core values
  - **Ethical point of view:** respect other people and their core values
- **Society** Association of people organized under a system of rules | | **Rules:** advance the good of members over time
- **Morality** A society’s rules of conduct | | What people ought / ought not to do in various situations
- **Ethics** Rational examination of morality & Evaluation of people’s behavior

**Why Study Ethics?**

- **Ethics:** a way to decide the best thing to do
- New problems accompany new technologies
- “Common wisdom” may not exist for novel situations brought about by new technologies
- **Workable ethical theory:** produces explanations that might be persuasive to a skeptical, yet open-minded audience

**What Is Relativism**

- **Relativism**
  - No universal norms of right and wrong
  - One person can say “X is right,” another can say “X is wrong,” and both can be right
- These guidelines vary from place to place and from time to time

*Not a workable ethical theories*

	Subjective Relativism	Cultural Relativism	Divine Command Theory	Ethical Egoism
<b>Definition</b>	Each person decides right and wrong for himself or herself	What is “right” and “wrong” depends upon a society’s actual moral guidelines	Good actions: those aligned with God’s will Bad actions: those contrary to God’s will	Each person should focus exclusively on his or her self-interest
<b>Case for</b>	<ul style="list-style-type: none"> <li>• Well-meaning and intelligent people disagree on moral issues</li> <li>• Ethical debates are disagreeable and pointless</li> </ul>	<ul style="list-style-type: none"> <li>• Different social contexts demand different moral guidelines</li> <li>• It is arrogant for one society to judge another</li> </ul>	<ul style="list-style-type: none"> <li>• We owe obedience to our Creator</li> <li>• God is all-good and all-knowing</li> <li>• God is the ultimate authority</li> </ul>	<ul style="list-style-type: none"> <li>• It is practical since we are already inclined to do what’s best for ourselves</li> <li>• It’s better to let other people take care of themselves</li> <li>• The community can benefit when individuals put their well-being first</li> <li>• Other moral principles are rooted in the principle of self-interest</li> </ul>
<b>Case against</b>	<ul style="list-style-type: none"> <li>• Blurs distinction between doing what you think is right and doing what you want to do</li> <li>• Makes no moral distinction between the actions of different people</li> <li>• SR and tolerance are two different things</li> <li>• Decisions may not be based on reason</li> </ul>	<ul style="list-style-type: none"> <li>• It doesn’t explain how moral guidelines are determined</li> <li>• What if there are no cultural norms?</li> <li>• It provides no way out for cultures in conflict</li> <li>• Only indirectly based on reason</li> </ul>	<ul style="list-style-type: none"> <li>• Different holy books disagree</li> <li>• Society is multicultural, secular</li> <li>• Some modern moral problems not addressed in scripture</li> <li>• Based on obedience, not reason</li> </ul>	<ul style="list-style-type: none"> <li>• We know a lot about what is good for someone else</li> <li>• Self-interest can lead to blatantly immoral behavior</li> <li>• Other moral principles are superior to principle of self-interest</li> <li>• People who take the good of others into account lead happier lives</li> </ul>

## workable ethical theories

	Kantianism	Act Utilitarianism	Rule Utilitarianism	Social Contract Theory
<b>Definition</b>	<b>Categorical Imperative (1<sup>st</sup> Formulation)</b> Act only from moral rules that you can at the same time will to be universal moral laws <b>2<sup>nd</sup> Formulation of Categorical Imperative</b> Act so that you treat both yourself and other people as ends in themselves and never only as a means to an end.	An action is right (or wrong) to the extent that it increases (or decreases) the total happiness of the affected parties.	We ought to adopt moral rules which, if followed by everyone, will lead to the greatest increase in total happiness	We implicitly accept a social contract In ideal society, no one above rules That prevents society from enacting bad rules
<b>Case for</b>	<ul style="list-style-type: none"> <li>Rational</li> <li>Produces universal moral guidelines</li> <li>Treats all persons as moral equals</li> </ul>	<ul style="list-style-type: none"> <li>Focuses on happiness</li> <li>Down-to-earth (practical)</li> <li>Comprehensive</li> </ul>	<ul style="list-style-type: none"> <li>Compared to act utilitarianism, it is easier to perform the utilitarian calculus.</li> <li>Not every moral decision requires performing utilitarian calculus.</li> <li>Moral rules survive exceptional situations</li> <li>Avoids the problem of moral luck</li> </ul>	<ul style="list-style-type: none"> <li>Framed in language of rights</li> <li>Explains why people act in self-interest without common agreement</li> <li>Provides clear analysis of certain citizen/government problems</li> </ul>
<b>Case against</b>	<ul style="list-style-type: none"> <li>Sometimes no rule adequately characterizes an action</li> <li>Sometimes there is no way to resolve a conflict between rules</li> <li>Kantianism allows no exceptions to perfect duties</li> </ul>	<ul style="list-style-type: none"> <li>Unclear whom to include in calculations</li> <li>Too much work</li> <li>Ignores our innate sense of duty</li> <li>Susceptible to the problem of moral luck</li> </ul>	<ul style="list-style-type: none"> <li>Utilitarianism ignores the problem of an unjust distribution of good consequences.</li> <li>All consequences must be measured on a single scale.</li> </ul>	<ul style="list-style-type: none"> <li>No one signed contract</li> <li>Some actions have multiple characterizations</li> <li>Conflicting rights problem</li> <li>May unjustly treat people who cannot uphold contract</li> </ul>

هذه النظرية هي نفسها النظرية الخامسة لكن لها اكثر من اسم ولها قسمين الون والسكند فورمليشن تميز بينهم بالسيناريو الى تحت

### critical Importance of Good Will

- Good will:** the desire to do the right thing
- Immanuel Kant:** Only thing in the world that is good without qualification is a good will
- Reason should cultivate desire to do right thing

### Plagiarism Scenario

- Carla** Single mother || Works full time || Takes two evening courses/semester
- History class**
  - Requires more work than normal
  - Carla earning an "A" on all work so far
  - Carla doesn't have time to write final report
- Carla purchases report and submits it as her own work**

### Kantian Evaluation (1st Formulation)

- Carla wants credit for plagiarized report
- Rule: "You may claim credit for work performed by someone else"
- If rule universalized, reports would no longer be credible indicator's of student's knowledge, and professors would not give credit for reports
- Proposal moral rule is self-defeating
- It is wrong for Carla to turn in a purchased report

Kantian Evaluation (2nd Formulation)

- Carla submitted another person's work as her own
- She attempted to deceive professor
- She treated professor as a means to an end
  - **End:** passing the course & **Means:** professor issues grade
- What Carla did was wrong

Illustration of 1st Formulation

- Question: Can a person in dire straits make a promise with the intention of breaking it later?
- Proposed rule: "I may make promises with the intention of later breaking them."
- The person in trouble wants his promise to be believed so he can get what he needs.
- Universalize rule: Everyone may make & break promises
- Everyone breaking promises would make promises unbelievable, contradicting desire to have promise believed
- The rule is flawed. The answer is "No."

Perfect and Imperfect Duties

- **Perfect duty:** duty obliged to fulfill without exception **Example: Telling the truth**
- **Imperfect duty:** duty obliged to fulfill in general but not in every instance **Example: Helping others**

هذه الجزئية تابعة للنظرية السادسة

Act Utilitarianism

- **Utilitarianism**
  - Morality of an action has nothing to do with intent
  - Focuses on the consequences
  - A consequentialist theory
- **Act utilitarianism**
  - Add up change in happiness of all affected beings
  - Sum > 0, action is good || Sum < 0, action is bad

Bentham: Weighing Pleasure/Pain

- Intensity || Duration || Certainty || Propinquity || Fecundity || Purity || Extent

هذه الجزئية تابعة للنظرية السابعة

Anti-Worm Scenario

- August 2003: Blaster worm infected thousands of Windows computers
- Soon after, Nachi worm appeared
  - Took control of vulnerable computer
  - Located and destroyed copies of Blaster
  - Downloaded software patch to fix security problem
  - Used computer as launching pad to try to "infect" other vulnerable PCs

Evaluation using Rule Utilitarianism

- **Proposed rule:** If I can write a helpful worm that removes a harmful worm from infected computers and shields them from future attacks, I should do so
- Who would benefit
  - People who do not keep their systems updated
- Who would be harmed
  - People who use networks
  - People who's computers are invaded by buggy anti-worms
  - System administrators
- **Conclusion:** Harm outweighs benefits. Releasing anti-worm is wrong.

هذه الجزئية تابعة للنظرية الثامنةBasis of Social Contract Theory

- Thomas Hobbes
  - “State of nature”
  - We implicitly accept a social contract
- Establishment of moral rules to govern relations among citizens
- Government capable of enforcing these rules
- Jean-Jacques Rousseau
  - In ideal society, no one above rules
  - That prevents society from enacting bad rules

James Rachels’s Definition

“Morality consists in the set of rules, governing how people are to treat one another, that rational people will agree to accept, for their mutual benefit, on the condition that others follow those rules as well.”

Kinds of Rights

- **Negative right:** A right that another can guarantee by leaving you alone
- **Positive right:** A right obligating others to do something on your behalf
- **Absolute right:** A right guaranteed without exception
- **Limited right:** A right that may be restricted based on the circumstances

Correlation between Types of Rights

- **Positive rights** tend to be more limited || **Negative rights** tends to be more absolute

John Rawls’s Principles of Justice

- Each person may claim a “fully adequate” number of basic rights and liberties, so long as these claims are consistent with everyone else having a claim to the same rights and liberties
- Any social and economic inequalities must
  - Be associated with positions that everyone has a fair and equal opportunity to achieve
  - Be to the greatest benefit of the least-advantaged members of society (the difference principle)

DVD Rental Scenario

- Bill owns chain of DVD rental stores
- Collects information about rentals from customers
- Constructs profiles of customers
- Sells profiles to direct marketing firms
- Some customers happy to receive more mail order catalogs; others unhappy at increase in “junk mail”

Evaluation (Social Contract Theory)

- Consider rights of Bill, customers, and mail order companies.
- Does customer have right to expect name, address to be kept confidential?
- If customer rents DVD from bill, who owns information about transaction?
- If Bill and customer have equal rights to information, Bill did nothing wrong to sell information.
- If customers have right to expect name and address or transaction to be confidential without giving permission, then Bill was wrong to sell information without asking for permission.

Objectivism vs. Relativism

- **Objectivism:** Morality has an existence outside the human mind
- **Relativism:** Morality is a human invention
- Kantianism, utilitarianism, and social contract theory examples of objectivism

Social Contract Theory Perspective

- Everyone in society bears certain burdens in order to receive certain benefits

- Legal system supposed to guarantee people's rights are protected
- Everything else being equal, we should be law-abiding
- Should only break law if compelled to follow a higher-order moral obligation

#### Kantian Perspective

- Everyone wants to be treated justly
- **Imagine rule:** "I may break a law I believe to be unjust"
- If everyone acted according to this rule, then laws would be subverted
- **Contradiction:** Cannot both wish to be treated justly and allow laws to be subverted

#### Rule Utilitarian Perspective

- What would be consequences of people ignoring laws they felt to be unjust?
- **Beneficial consequence:** Happiness of people who are doing what they please
- **Harmful consequences:** Harm to people directly affected by lawless actions, general loss of respect for laws, increased burden on criminal justice system
- Harms greater than benefits

### Ch.3

#### How Email Works

- Email: Messages embedded in files transferred between computers
- Email address: Uniquely identifies cyberspace mailbox
- Messages broken into packets
- Routers transfer packets from sender's mail server to receiver's mail server

#### The Spam Epidemic (1/3)

- Spam: Unsolicited, bulk email
- Spam is profitable
  - More than 100 times cheaper than "junk mail"
  - Profitable even if only 1 in 100,000 buys product
- Amount of email that is spam has ballooned
  - 8% in 2001
  - 90% in 2009

#### The Spam Epidemic (3/3)

- How firms get email addresses
  - Web sites, chat-room conversations, newsgroups
  - Computer viruses harvest addresses from PC address books
  - Dictionary attacks
  - Contests
- Most spam sent out by bot herders who control huge networks of computers
- Spam filters block most spam before it reaches users' inboxes

#### Need for Socio-Technical Solutions

- New technologies sometimes cause new social situations to emerge
  - **Calculators** → feminization of bookkeeping
  - **Telephones** → blurred work/home boundaries
- Spam an example of this phenomenon
  - Email messages practically free
  - Profits increase with number of messages sent
  - Strong motivation to send more messages
- Internet design allows unfair, one-way communications

#### Case Study: Ann the Acme Accountant

- Ann: Accountant at Acme Corporation
- She distributes paychecks to all 50 employees

- Ann sends email advertising Girl Scout cookie sale
- 9 recipients order cookies; average 4 boxes each
- Other 40 recipients unhappy to get email; half complain to a co-worker
- Did Ann do anything wrong?

#### Kantian Analysis

- We should always respect autonomy of others, treating them as ends in themselves and never only as the means to an end (2nd formulation of Categorical Imperative)
- Ann didn't misrepresent what she was doing
- She didn't force anyone to read the entire email
- Some who read her email chose to order cookies
- Therefore, she didn't "use" others, and her action was not strictly wrong
- An "opt in" approach would have been better

#### Act Utilitarian Analysis

- Benefit to Girls Scouts = \$108
  - \$3 profit per box of cookies
  - 36 boxes sold
- Harm to company: time wasted
  - Orders taken during breaks
  - Lost productivity from complaining: \$70
    - 20 employees × 2 × 5 minutes/employee = 200 minutes
    - 3.5 hours × \$20/hour = \$70
- Benefits exceed harms, so action good
- Company may create policy against future fundraisers

#### Rule Utilitarian Analysis

- Q: What would be consequences of everyone in company used email to solicit donations?
- A: Plenty of employee grumbling and lower morale
- If all doing it, unlikely any one cause would do well
- Harms greater than benefits, so Ann's action was wrong

#### Social Contract Theory Analysis

- Acme Corporation has no prohibition against using its email system this way
- Ann was exercising her right to express herself
- Some people didn't appreciate message, but she didn't act like a spammer
  - She didn't conceal her identity
  - She wasn't selling a fraudulent product
- Ann did nothing wrong

#### Summary

- Analyses reached different conclusions, but Ann could have taken a less controversial course
- She could have posted a sign-up sheet to identify those interested in cookie sale
- That way, she would have sent email only to those interested, avoiding the problems of grumbling and lost productivity

#### Attributes of the Web

- It is decentralized
- Every Web object has a unique address
- It is based on the Internet

#### How We Use the Web

- Shopping & Socializing (e.g., Facebook) & Contributing content (e.g., wikis, blogs) & Blogging
- Learning & Exploring our roots & Entering virtual worlds & Paying taxes & Gambling & Taking
- humanitarian action & Lots more!

### Twitter

- More than 200 million users
- Blogging tool
- Business promotion
- Role in Arab Spring uprisings debated
  - (+) Social networks lead to politicization
  - (-) Ties in social networks too weak for high-risk activism

### Governmental Control: Too Much or Too Little?

- Burma (Myanmar), Cuba, North Korea: Internet virtually inaccessible
- Saudi Arabia: centralized control center
- People's Republic of China: "one of most sophisticated filtering systems in the world" as well as censorship
- Germany: Forbids access to neo-Nazi sites
- United States: Repeated efforts to limit access of minors to pornography

### Forms of Direct Censorship

- Government monopolization
- Prepublication review
- Licensing and registration

### Self-censorship

- Most common form of censorship
- Group decides for itself not to publish
- Reasons
  - Avoid subsequent persecution
  - Maintain good relations with government officials (sources of information)
- Ratings systems created to advise potential audience
  - Movies, TVs, CDs, video games
  - Not the Web

### Challenges Posed by the Internet

- Many-to-many communications
- Dynamic connections
- Huge numbers of Web sites
- Extends beyond national borders, laws
- Hard to distinguish between minors and adults

### Ethical Perspectives on Censorship

- Kant opposed censorship
  - Enlightenment thinker
  - "Have courage to use your own reason"
- Mill opposed censorship
  - No one is infallible
  - Any opinion may contain a kernel of truth
  - Truth revealed in class of ideas
  - Ideas resulting from discourse are more influential

### Mill's Principle of Harm

"The only ground on which intervention is justified is to prevent harm to others; the individual's own good is not a sufficient condition."

### Freedom of Expression: History

- De Scandalis Magnatum (England, 1275)
- Court of Star Chamber
- 18th century

- No prior restraints on publication
- People could be punished for sedition or libel
- American states adopted bills of rights including freedom of expression
- Freedom of expression in 1st amendment to U.S. Constitution

#### 1st Amendment to U.S. Constitution

- Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

#### Freedom of Expression Not an Absolute Right

- 1st Amendment covers political and nonpolitical speech
- Right to freedom of expression must be balanced against the public good
- Various restrictions on freedom of expression exist

#### FCC v. Pacifica Foundation et al.

- George Carlin records “Filthy Words”
- WBAI in New York airs “Filthy Words” (1973)
- FCC issues declaratory order to Pacifica
- Pacifica sues
- U.S. Supreme Court ruled FCC did not violate 1st Amendment (5-4 decision)
  - Broadcast media “uniquely pervasive”
  - Broadcasting uniquely accessible to children

#### Case Study: Kate’s Blog

- **Kate:** Maintains a popular “life on campus” blog
- **Jerry:** Another student; active in Whig Party
- At private birthday party, someone gives Jerry a Tory Party T-shirt as a gag, and Jerry puts it on
- Kate uses cell phone to take picture of Jerry when he isn’t looking, posts it on her blog
- Story read by many people on and off campus
- Jerry confronts Kate and demands she remove photo; she complies, and they remain friends
- Kate’s blog and Jerry both become more popular

#### Kantian Analysis

- Kate uploaded Jerry’s photo to her blog without asking his permission
- She treated him as a means to her end of increasing the readership of her Web site
- Her action was wrong

#### Social Contract Theory Analysis

- Birthday party held in apartment of one of Jerry’s friends
- Jerry had a reasonable expectation of privacy
- Kate violated Jerry’s right to privacy
- Kate’s action was wrong

#### Act Utilitarian Analysis

- **Benefits**
  - Popularity of Kate’s blog increased (definitely)
  - Jerry become more popular on campus (definitely)
- **Harms**
  - Jerry’s anger at Kate (only temporary)
  - Photo could discredit Jerry at some point in future (unlikely)
- **Kate did nothing wrong by posting Jerry’s photo**

#### Rule Utilitarian Analysis

- What if everyone were constantly taking photos of people they encountered and posting them?
- Positive consequences



- People would have more opportunities to keep up with what their friends are doing
- People might be more reluctant to engage in illegal activities
- Negative consequences
  - People would become more self-conscious
  - Some relationships would be harmed
- Negative consequences more weighty than positive consequences, so Kate's action was bad

### Summary

- Three out of four analyses: Wrong for Kate to post the photo without asking Jerry's permission
- Kate figured it would be better to beg for forgiveness than ask for permission, but she cut Jerry out of a decision that affected both of them, and that's no way to treat a friend
- Kate should have tried to get Jerry's consent

### Web Filters

- **Web filter:** Software that prevents display of certain Web pages
  - May be installed on an individual PC
  - ISP may provide service for customers
- Methodologies
  - Maintain "black list" of objectionable sites
  - Examine content for objectionable words/phrases

### Ethical Evaluations of CIPA

- **Kantian evaluation:** CIPA is wrong
- Act utilitarian evaluation: depends on how benefits and harms are weighed
- Social contract theory: freedom of conscience should be given precedence

### Sexting

- **Definition:** sexually suggestive text messages or emails with nude or nearly nude photographs
- In a 2009 survey, 9% of U.S. teenagers admitted to sending a sext, 17% admitted to receiving a sext
- Case of Jesse Logan
- Case of Phillip Alpert
- Case of Ting-Yi Oei

### Identity Theft (1/2)

- **Identity theft:** When a person uses another person's electronic identity
- Leading form of identity theft is credit card fraud
- Financial institutions contribute to problem by making it easy to open new accounts
- About 10 million cases of identity theft in U.S. in 2010
- Consumer's liability for credit card losses limited to \$50

### Identity Theft (2/2)

- Nearly half of cases from lost credit card, checkbook, etc.
- In 20% of cases, credit card number stolen at time of making purchase (skimmers)
- About 1 million cases of identity theft annually in United States from online activities
- Phishing: Use of email to attempt to deceive people into revealing personal information
- Identity theft a federal crime, but only 1 in 700 cases results in an arrest

### Chat-Room Predators

- **Chat room:** Supports real-time discussions among many people connected to network
- Instant messaging and chat rooms replacing telephone for many people
- Some pedophiles meeting children through chat rooms
- Police countering with "sting" operations

### Ethical Evaluations of "Stings"

- Utilitarian evaluation
- Kantian evaluation

- Social contract theory evaluation

#### False Information

- Quality of Web-based information varies widely
- Other media also have information of varying quality
  - The New York Times v. The National Enquirer
  - 60 Minutes v. Conspiracy Theory
- Google attempts to reward quality
  - Ranking uses “voting” algorithm
  - If many links point to a page, Google search engine ranks that page higher

#### Cyberbullying

- **Cyberbullying:** Use of the Internet or phone system to inflict psychological harm
- In a 2009 survey, 10% admitted to cyberbullying, and 19% said they had been cyberbullied
- Case of Ghyslain Raza
- Case of Megan Meier
- Megan Meier Cyberbullying Prevention Act

#### Is Internet Addiction Real?

- Some liken compulsive computer use to pathological gambling
- Traditional definition of addiction:
  - Compulsive use of harmful substance or drug
  - Knowledge of its long-term harm
- Some people spend 40-80 hours/week on the Internet, with individual sessions lasting up to 20 hours
- Kimberly Young created test for Internet addiction
  - Sample question: “Have you repeatedly made unsuccessful efforts to control, cut back, or stop Internet use?”
  - Patients who answer “yes” to at least 5 of 8 questions may be addicted
- **Others disagree, noting**
  - Computer use is generally considered a positive activity
  - Excessive use does not lead to criminal activity
  - More accurate to call excessive use a compulsion

#### Contributing Factors

- **Social factors**
  - Peer groups
- **Situational factors**
  - Stress
  - Lack of social support and intimacy
  - Limited opportunities for productive activity
- **Individual factors**
  - Tendency to pursue activities to excess
  - Lack of achievement
  - Fear of failure

#### Ethical Evaluation

- **Enlightenment view**
  - Individuals can and should govern their lives
  - People are responsible for their choices
- **Jeffrey Reiman’s view**
  - Addict’s behavior makes sense if addict has no hope for a better future
  - Society bears responsibility for putting people in hopeless situations

**Ch.4**Information Technology Changing Intellectual Property Landscape

- Value of intellectual properties much greater than value of media
  - Creating first copy is costly
  - Duplicates cost almost nothing
- Illegal copying pervasive
  - Internet allows copies to spread quickly and widely
- In light of advances in information technology, how should we treat intellectual property?

What Is Intellectual Property?

- Intellectual property: any unique product of the human intellect that has commercial value
  - Books, songs, movies
  - Paintings, drawings
  - Inventions, chemical formulas, computer programs
- Intellectual property ≠ physical manifestation

Property Rights

- Locke: The Second Treatise of Government
- People have a right...
  - to property in their own person
  - to their own labor
  - to things which they remove from Nature through their labor
- As long as...
  - nobody claims more property than they can use
  - after someone removes something from common state, there is plenty left over

Expanding the Argument to Intellectual Property

- Writing a play akin to making a belt buckle
- Belt buckle
  - Mine ore || Smelt it down || Cast it
- Writing a play
  - “Mine” words from English language
  - “Smelt” them into prose
  - “Cast” them into a complete play

Benefits of Intellectual Property Protection

- Some people are altruistic; some are not
- Allure of wealth can be an incentive for speculative work
- Authors of U.S. Constitution recognized benefits to limited intellectual property protection

Limits to Intellectual Property Protection

- Giving creators rights to their inventions stimulates creativity
- Society benefits most when inventions in public domain
- Congress has struck compromise by giving authors and inventors rights for a limited time

Trade Secret

- Confidential piece of intellectual property that gives company a competitive advantage
- Never expires
- Not appropriate for all intellectual properties
- Reverse engineering allowed
- May be compromised when employees leave firm

Trademark, Service Mark

- **Trademark:** Identifies goods
- **Service mark:** Identifies services
- Company can establish a “brand name”
- Does not expire
- If brand name becomes common noun, trademark may be lost
- Companies advertise to protect their trademarks
- Companies also protect trademarks by contacting those who misuse them

Patent

- A public document that provides detailed description of invention
- Provides owner with exclusive right to the invention
- Owner can prevent others from making, using, or selling invention for 20 years

Copyright

- Provides owner of an original work five rights
  - Reproduction
  - Distribution
  - Public display
  - Public performance
  - Production of derivative works
- Copyright-related industries represent 5% of U.S. gross domestic product (> \$500 billion/yr)
- Copyright protection has expanded greatly since 1790

Copyright Creep

- Since 1790, protection for books extended from 28 years to 95 years or more
- Some suggested latest extension done to prevent Disney characters from becoming public domain
- Group of petitioners challenged the Copyright Term Extension Act of 1998, arguing Congress exceeded Constitutional power
- U.S. Supreme Court
  - CTEA does not create perpetual copyrights
  - CTEA is constitutional

Fair Use Concept

- Sometimes legal to reproduce a copyrighted work without permission
- Courts consider four factors
  - Purpose and character of use
  - Nature of work
  - Amount of work being copied
  - Affect on market for work

sony v. Universal City Studios

- Sony introduces Betamax VCR (1975)
- People start time shifting TV shows
- Movie studios sue Sony for copyright infringements
- U.S. Supreme Court rules (5-4) that time shifting is fair use

Digital Recording Technology

- Copying from vinyl records to cassette tapes introduced hiss and distortions
- Introduction of compact disc a boon for music industry
  - Cheaper to produce than vinyl records
  - Higher quality
  - Higher price ⇒ higher profits
- BUT it's possible to make a perfect copy of a CD

Audio Home Recording Act of 1992

- Protects rights of consumers to make copies of analog or digital recordings for personal, noncommercial use
  - Backup copy
  - Give to family member
- Digital audio recorders must incorporate Serial Copyright Management System (SCMS), so consumers can't make a copy of a copy

#### RIAA v. Diamond Multimedia Systems

- MP3 compression allows songs to be stored in 10% of the space, with little degradation
- Diamond introduces Rio MP3 player (1998)
- People start space shifting their music
- RIAA starts legal action against Diamond for violation of the Audio Home Recording Act
- U.S. Court of Appeals, 9th Circuit, affirms that space shifting is consistent with copyright law

#### Kelly v. Arriba Soft Corporation

- Kelly: Photographer maintaining Web site with copyrighted photos
- Arriba Soft: Creates search engine that returned thumbnail images
- Kelly sues Arriba Soft for copyright infringement
- U.S. Court of Appeals, 9th Circuit, affirms that use of images is a fair use

#### Google Books

- Google announced plan to scan millions of books held by several huge libraries, creating searchable database of all words
- If public domain book, system returns PDF
- If under copyright, user can see a few sentences; system provides links to libraries and online booksellers
- Authors Guild and publishers sued Google for copyright infringement
- Out-of-court settlement under review by U.S. District Court for Southern District of New York

#### Benefits of Proposed Settlement

- Google would pay \$125 million to resolve legal claims of authors and publishers and establish Book Rights Registry
- Readers would have much easier access to out-of-print books at U.S. public libraries and university libraries
- University libraries could purchase subscriptions giving their students access to collections of some of world's greatest libraries
- Authors and publishers would receive payments earned from online access of their books, plus share of advertising revenues

#### Criticisms of Proposed Settlement

- Google should have gone to court
  - Google had a good case that its use was a fair use, based on precedent of Kelly v. Arriba Soft
  - If Google had been found not guilty of copyright infringement, it could have given public access to books at lower rates
- Agreement gives Google a virtual monopoly over orphaned works
- Potential chilling effect of Google tracking the pages that people are viewing

#### Court Rejects Proposed Settlement

- March 2011: U.S. District Court for Southern District of New York rejected proposed settlement
- Judge ruled agreement would have:
  - Given Google significant advantage over competitors
  - Rewarded Google for "wholesale copying of copyrighted words without permission"
  - Given Google liberal rights over orphaned works