Chapter 1 : "Intellectual property" is a silly euphemism | Law | The Guardian

on firm strategy, the competitive landscape, and the rapidly changing contours of intellectual property law. (Keywords: Intellectual Property, Innovation Management, Strategic Management, Knowledge Management.

The Statute of Anne came into force in The Statute of Monopolies and the British Statute of Anne are seen as the origins of patent law and copyright respectively, [8] firmly establishing the concept of intellectual property. The first known use of the term intellectual property dates to , when a piece published in the Monthly Review used the phrase. The organization subsequently relocated to Geneva in , and was succeeded in with the establishment of the World Intellectual Property Organization WIPO by treaty as an agency of the United Nations. According to legal scholar Mark Lemley , it was only at this point that the term really began to be used in the United States which had not been a party to the Berne Convention , [4] and it did not enter popular usage there until passage of the Bayh-Dole Act in Section 1 of the French law of stated, "All new discoveries are the property of the author; to assure the inventor the property and temporary enjoyment of his discovery, there shall be delivered to him a patent for five, ten or fifteen years. Until recently, the purpose of intellectual property law was to give as little protection as possible in order to encourage innovation. Historically, therefore, they were granted only when they were necessary to encourage invention, limited in time and scope. Morin argues that "the emerging discourse of the global IP regime advocates for greater policy flexibility and greater access to knowledge, especially for developing countries. There are also more specialized or derived varieties of sui generis exclusive rights, such as circuit design rights called mask work rights in the US and supplementary protection certificates for pharmaceutical products after expiry of a patent protecting them and database rights in European law. The term "industrial property" is sometimes used to refer to a large subset of intellectual property rights including patents, trademarks, industrial designs, utility models, service marks, trade names, and geographical indications. Patent A patent is a form of right granted by the government to an inventor or their successor-in-title, giving the owner the right to exclude others from making, using, selling, offering to sell, and importing an invention for a limited period of time, in exchange for the public disclosure of the invention. An invention is a solution to a specific technological problem, which may be a product or a process and generally has to fulfill three main requirements: Copyright A copyright gives the creator of an original work exclusive rights to it, usually for a limited time. Copyright may apply to a wide range of creative, intellectual, or artistic forms, or "works". Industrial design right An industrial design right sometimes called "design right" or design patent protects the visual design of objects that are not purely utilitarian. An industrial design consists of the creation of a shape, configuration or composition of pattern or color, or combination of pattern and color in three-dimensional form containing aesthetic value. An industrial design can be a two- or three-dimensional pattern used to produce a product, industrial commodity or handicraft. Generally speaking, it is what makes a product look appealing, and as such, it increases the commercial value of goods. The variety must amongst others be novel and distinct and for registration the evaluation of propagating material of the variety is considered. Trademark A trademark is a recognizable sign , design or expression which distinguishes products or services of a particular trader from the similar products or services of other traders. Trade dress Trade dress is a legal term of art that generally refers to characteristics of the visual and aesthetic appearance of a product or its packaging or even the design of a building that signify the source of the product to consumers. Trade secret A trade secret is a formula , practice, process, design , instrument, pattern , or compilation of information which is not generally known or reasonably ascertainable, by which a business can obtain an economic advantage over competitors and customers. There is no formal government protection granted; each business must take measures to guard its own trade secrets e. Object of intellectual property law[edit] The main purpose of intellectual property law is to encourage the creation of a wide variety of intellectual goods for consumers. Because they can then profit from them, this gives economic incentive for their creation. Unlike traditional property, intellectual property is indivisible â€” an unlimited number of people can "consume" an intellectual good without it being depleted. Additionally, investments in intellectual goods suffer from problems of appropriation â€” while a landowner can surround

their land with a robust fence and hire armed guards to protect it, a producer of information or an intellectual good can usually do very little to stop their first buyer from replicating it and selling it at a lower price. Balancing rights so that they are strong enough to encourage the creation of information and intellectual goods but not so strong that they prevent their wide use is the primary focus of modern intellectual property law. Some commentators have noted that the objective of intellectual property legislators and those who support its implementation appears to be "absolute protection". The thinking is that creators will not have sufficient incentive to invent unless they are legally entitled to capture the full social value of their inventions". Other recent developments in intellectual property law, such as the America Invents Act , stress international harmonization. Recently there has also been much debate over the desirability of using intellectual property rights to protect cultural heritage, including intangible ones, as well as over risks of commodification derived from this possibility. Financial incentive[edit] These exclusive rights allow owners of intellectual property to benefit from the property they have created, providing a financial incentive for the creation of an investment in intellectual property, and, in case of patents, pay associated research and development costs. The value of intellectual property is considered similarly high in other developed nations, such as those in the European Union. One is to give statutory expression to the moral and economic rights of creators in their creations and the rights of the public in access to those creations. The second is to promote, as a deliberate act of Government policy, creativity and the dissemination and application of its results and to encourage fair trading which would contribute to economic and social development. The arguments that justify intellectual property fall into three major categories. Personality theorists believe intellectual property is an extension of an individual. Utilitarians believe that intellectual property stimulates social progress and pushes people to further innovation. Lockeans argue that intellectual property is justified based on deservedness and hard work. Appropriating these products is viewed as unjust. They argue that we own our bodies which are the laborers, this right of ownership extends to what we create. Thus, intellectual property ensures this right when it comes to production. Innovation and invention in 19th century America has been attributed to the development of the patent system. Systems of protection such as Intellectual property optimize social utility. Intellectual property protects these moral claims that have to do with personality. Lysander Spooner argues "that a man has a natural and absolute rightâ€”and if a natural and absolute, then necessarily a perpetual, rightâ€”of property, in the ideas, of which he is the discoverer or creator; that his right of property, in ideas, is intrinsically the same as, and stands on identically the same grounds with, his right of property in material things; that no distinction, of principle, exists between the two cases". The Unknown Ideal that the protection of intellectual property is essentially a moral issue. The belief is that the human mind itself is the source of wealth and survival and that all property at its base is intellectual property. To violate intellectual property is therefore no different morally than violating other property rights which compromises the very processes of survival and therefore constitutes an immoral act. Intellectual property infringement Violation of intellectual property rights, called "infringement" with respect to patents, copyright, and trademarks, and "misappropriation" with respect to trade secrets, may be a breach of civil law or criminal law, depending on the type of intellectual property involved, jurisdiction, and the nature of the action. Patent infringement Patent infringement typically is caused by using or selling a patented invention without permission from the patent holder. The scope of the patented invention or the extent of protection [59] is defined in the claims of the granted patent. There is safe harbor in many jurisdictions to use a patented invention for research. This safe harbor does not exist in the US unless the research is done for purely philosophical purposes, or in order to gather data in order to prepare an application for regulatory approval of a drug. It is often called "piracy". Examples of such doctrines are the fair use and fair dealing doctrine. Trademark infringement Trademark infringement occurs when one party uses a trademark that is identical or confusingly similar to a trademark owned by another party, in relation to products or services which are identical or similar to the products or services of the other party. In many countries, a trademark receives protection without registration, but registering a trademark provides legal advantages for enforcement. Infringement can be addressed by civil litigation and, in several jurisdictions, under criminal law. In the United States, trade secrets are protected under state law, and states have nearly universally adopted the Uniform Trade Secrets Act. This law contains two provisions criminalizing two sorts

of activity. The first, 18 U. The second, 18 U. The statutory penalties are different for the two offenses. In Commonwealth common law jurisdictions, confidentiality and trade secrets are regarded as an equitable right rather than a property right but penalties for theft are roughly the same as in the United States.

Chapter 2 : Intellectual property : examples & explanations in SearchWorks catalog

The Cell for Studies in Intellectual Property Rights (CSIPR), incorporated under the aegis of Prof. (Dr.) Ghayur Alam, Chair of IP Law at the National Law Institute University, Bhopal (NLIU), is now accepting submissions for Volume 8 of the NLIU Journal of Intellectual Property Law.

Intellectual Property Law Table of contents Foreword: The suppressed misappropriation origins of trademark antidilution law: Dilution as unfair competition: An unfair competition approach to GI protection Dev Gangjee; 6. A cognac after Spanish champagne? Scott Hemphill and Jeannie Suk; 8. IP at the edges - protection for fashion: Paracopyright - a peculiar right to control access Joseph Liu; The protection of technological measures: A legal tangle of secrets and disclosures in trade: Hoffman and beyond Jeanne Fromer; Patents and trade secrets in England: Singer and physician patenting norms Katherine Strandburg; Patent Subject Matter and Scope: Funk forward Ted Sichelman; Patent eligibility and scope revisited in light of Schutz v. Copyright and Trademark Defences: Make me walk, make me talk, do whatever you please: Barbie and exceptions Rebecca Tushnet; Parody and IP claims: Her research interests include international and domestic intellectual property law as well as civil procedure. Ginsburg is the Morton L. She teaches legal methods, copyright law and trademarks law.

Chapter 3 : Copyright Policy - Contour

Through the prism of leading cases, this book will focus on new and evolving forms of intellectual property, such as the right of publicity and the protection of traditional knowledge, and on evolving limitations, including limits on the subject matter and scope of intellectual property rights.

Does it matter what we call it? Property, after all, is a useful, well-understood concept in law and custom, the kind of thing that a punter can get his head around without too much thinking. Fundamentally, the stuff we call "intellectual property" is just knowledge - ideas, words, tunes, blueprints, identifiers, secrets, databases. This stuff is similar to property in some ways: Out of control But it is also dissimilar from property in equally important ways. Most of all, it is not inherently "exclusive". If you trespass on my flat, I can throw you out exclude you from my home. If you steal my car, I can take it back exclude you from my car. But once you know my song, once you read my book, once you see my movie, it leaves my control. For example, my daughter was born on February 3, We have an entire vocabulary and set of legal concepts to deal with the value that a human life embodies. Flexibility and nuance Trying to shoehorn knowledge into the "property" metaphor leaves us without the flexibility and nuance that a true knowledge rights regime would have. Nevertheless, these are all things that you have a strong interest in, and that interest can and should be protected by law. There are plenty of creations and facts that fall outside the scope of copyright, trademark, patent and the other rights that make up the hydra of Intellectual Property, from recipes to phone books to "illegal art" like musical mashups. I once heard the WIPO representative for the European association of commercial broadcasters explain that, given all the investment his members had put into recording the ceremony on the 60th anniversary of the Dieppe Raid in the second world war, they should be given the right to own the ceremony, just as they would own a teleplay or any other "creative work". I immediately asked why the "owners" should be some rich guys with cameras - why not the families of the people who died on the beach? Why not the people who own the beach? Why not the generals who ordered the raid? Copyright - with all its quirks, exceptions and carve outs - was, for centuries, a legal regime that attempted to address the unique characteristics of knowledge, rather than pretending to be just another set of rules for the governance of property. The legacy of 40 years of "property talk" is an endless war between intractable positions of ownership, theft and fair dealing. The state should regulate our relative interests in the ephemeral realm of thought, but that regulation must be about knowledge, not a clumsy remake of the property system.

Chapter 4 : Intellectual property - Wikipedia

The contours of intellectual property law Subject matter: creative expression, "no matter how humble, crude, or obvious" Excluded subject matter: ideas, functional aspects, infringing material, government works.

Various systems of legal rules exist that empower persons and organizations to exercise such control. Patent law enables the inventors of new products and processes to prevent others from making, using, or selling their inventions. Trademark law empowers the sellers of goods and services to apply distinctive words or symbols to their products and to prevent their competitors from using the same or confusingly similar insignia or phrasing. Finally, trade-secret law prohibits rival companies from making use of wrongfully obtained confidential commercially valuable information e. The emergence of intellectual-property law Until the middle of the 20th century, copyright, patent, trademark, and trade-secret law commonly were understood to be analogous but distinct. In most countries they were governed by different statutes and administered by disparate institutions, and few controversies involved more than one of these fields. It also was believed that each field advanced different social and economic goals. During the second half of the 20th century, however, the lines between these fields became blurred. In the s, for example, copyright law was extended to provide protection to computer software. The result was that the developers of software programs could rely upon either or both fields of law to prevent consumers from copying programs and rivals from selling identical or closely similar programs. Contemporary culture is replete with examples of such objectsâ€”e. In many countries the work of the creators of these objects is protected by at least three systems of rules: Nevertheless, the rules combine to create strong impediments to the imitation of nonfunctional design features. The integration of copyright, patent, trademark, and trade-secret law into an increasingly consolidated body of intellectual-property law was reinforced by the emergence in many jurisdictions of additional types of legal protection for ideas and information. Similarly, the European Union has extended extensive protections to the creators of electronic databases. Computer chips, the shapes of boat hulls, and folklore also have been covered by intellectual-property protections. Internet domain names In the s the exclusive right to use Internet domain namesâ€”unique sequences of letters divided, by convention, into segments separated by periods that correspond to the numerical Internet Protocol IP addresses that identify each of the millions of computers connected to the Internetâ€”became a highly contested issue. The mnemonic character of domain names e. The task of allocating domain names throughout the world and of resolving disputes over them has been largely assumed by a private organization, the Internet Corporation for Assigned Names and Numbers ICANN. In the United States established a similar national system, known as the Anticybersquatting Consumer Protection Act, which is administered by the federal courts. Critics argued that the legislation was too broad and could be used by companies to suppress consumer complaints, parody, and other forms of free speech. Countries that fail to do so are subject to various WTO-administered trade sanctions. Noting that most owners of intellectual property e. Some economists, however, maintain that the long-term effect of the agreement will be to benefit developing countries by stimulating local innovation and encouraging foreign investment. Despite the existence of TRIPS, global rates of piracy of software, music, movies, and electronic games remain high, in part because many countries in Africa and Latin America have not met the deadlines imposed by the agreement for revamping their intellectual-property laws. Other countries, particularly in Asia, have formally complied with the agreement by passing new laws but have not effectively enforced them. Economic and ethical issues The tightening of laws governing intellectual property has been paralleled by a steady increase in the economic and cultural importance of intellectual-property rights. The entertainment industry has long been heavily dependent on intellectual property; the fortunes of record companies and movie studios are closely tied to their ability to enforce the copyrights on their products. Similarly, pharmaceutical companies have used the monopoly power created by their patent rights to charge high prices for their products, which has enabled them both to cover the enormous costs of developing new drugs and to make considerable profits. Other, newer industries have become equally or even more dependent on intellectual-property rights. The developers and distributors of computer software, for example, insist that their

ability to remain in business is dependent on their power to prevent the unauthorized reproduction of their creations. Intellectual-property protection is widely thought to be even more important to the rapidly growing biotechnology industry, where the development of new techniques of genetic engineering or of new life-forms employing such techniques can be extremely expensive. Biotechnology firms argue that, if they were unable to prevent rivals from imitating their creations, they would not be able to recoup their costs and thus would have no incentive to invest in the research and development necessary for scientific breakthroughs. Companies selling goods and services over the Internet have made similar claims concerning the importance of their domain names. The strengthening of intellectual-property rights has not met with unanimous approval. Some critics argue that it is immoral for pharmaceutical companies to use their patent rights to set prices for their AIDS drugs at levels that cannot be afforded by most of the people in Africa and Latin America who are afflicted by the disease. Current patent law, however, awards the exclusive right to market and profit from such drugs to the pharmaceutical companies, leaving uncompensated the countries and indigenous groups whose contributions were essential to the finished products. Theoretical debates The growth and increasing importance of intellectual-property rights have stimulated a vigorous debate among scholars concerning the justification for and the appropriate contours of this body of law. The debate has largely centred around the advancement and criticism of four theories. The first and most prominent of these is an outgrowth of utilitarianism. These seemingly benign characteristics result in the danger that, unless the creators of intellectual products are given legal control over their reproduction, there will be little incentive to create them, because creators will be unable to recover their original production costs. Somewhat more specifically, utilitarians urge lawmakers to craft intellectual-property regulations carefully in order to strike an optimal balance between the socially desirable tendency of such laws to stimulate the creation of inventions and works of art and their partially offsetting tendency to curtail the widespread public enjoyment of these products. A second theory was inspired by the writings of the 17th-century English philosopher John Locke , and specifically by his account of the origin of property rights. Proponents of this theory argue that a person who labours upon unowned resources has a natural right to the fruits of his efforts and that the state has a duty to respect and enforce that natural right. Theories in this vein are considered especially strong when applied to items such as books, music, and simple inventions, which are created primarily through intellectual labour and which are commonly fashioned from raw materials facts and ideas that lie in the public domain. A fourth, less-well-defined theory contends that intellectual-property rights can and should be shaped so as to help foster the achievement of a just and aesthetically sophisticated culture. Advocates of this approach emphasize the capacity of copyright, patent, and trademark systemsâ€”if properly crafted and limitedâ€”to promote a vibrant democracy and a participatory and pluralist civil society. Each theory has its critics, who either doubt the premises of the arguments made in support of the theory or contest their application to the law. Together the proponents and critics of the four perspectives have generated a cacophonous debate in journals of law, economics, and philosophy. On occasion, lawmakers have been moved by this debate. In the s scholars of all four stripes denounced the growth in the United States of the right of publicity. Utilitarians argued that the lures of fame and money already provided more than sufficient incentives to induce people to become renowned; thus, no additional creative activity would be stimulated by protecting celebrities against commercial uses of their identities. Some appellate courts responded to this chorus of criticism by limiting the scope of the right. Another example of scholarly influence involves the proliferation of patents on methods of doing business. Patents of this sort were rarely granted in any jurisdiction before , when an influential U. Scholars have been nearly unanimous in denouncing this development, and in part this opposition led the Patent and Trademark Office to revise its procedures to limit the availability of such patents. Several European Union countries also were hesitant about following the lead of the United States in this matter. Such points of contact between scholars and legislators have been rare, however, as the development of intellectual-property law has been largely unaffected by the views of scholars. Trends Despite the strengthening of intellectual-property laws, the growing economic and cultural importance of intellectual-property rights, and a widespread view that such rights are socially desirable, the future of intellectual property remains in some doubt. Intellectual-property rights are threatened principally by the proliferation of technologies that facilitate

the violation of copyright and patent rules. One such system, known as Napster , acquired 70 million subscribers before courts in the United States compelled its closure. From the ashes of Napster sprang many other less-centralized, and thus less legally vulnerable , file-sharing systems. Partly as a result, sales of authorized copies of recorded music began to decline, and the recording industry attempted to develop procedures to enable it to profit from Internet file sharing. Analogous developments have threatened copyrights on movies, books, and software. In , however, a U. In the event that the conditions are violated, the license disappears, thereby resulting in copyright infringement. The ruling was a legal milestone for open-source softwareâ€"computer software that allows readers to view its programming or source code, improve it, and then redistribute the resulting software in its modified form. Similarly, the owners of patent rights or other intellectual-property rights on new plant varieties complain that the unauthorized replication of their inventions is common. The creators of these materials have sought and often have secured legislative reinforcements of their legal positions, but those reinforcements often are not sufficient to stem violations. To combat the threat and to provide themselves with effective protection, many developers have turned to technological shields or to alternative sources of revenue. Nevertheless, the system of intellectual-property rules is likely to play an evolving and vital role in economic and social life in the remainder of the 21st century.

Chapter 5 : What is Intellectual Property?

mobilized to challenge the contours of intellectual property (IP) law. Very recently, some from these groups have begun to develop a shared critique under the umbrella of "access to.

Chapter 6 : Innovation Policy Colloquium | NYU School of Law

Rather, the value of the various means to protect and benefit from IP depends on firm strategy, the competitive landscape, and the rapidly changing contours of intellectual property law. William W. Fisher, The Implications for Law of User Innovation, 94 Minn. L. Rev. ().

Chapter 7 : Intellectual-property law | theinnatdunvilla.com

Intellectual property is the culmination of brain work: ideas made manifest are legally defined and protected to variously advance the interests of their creators and the public good. Intellectual property is also arguably the most important and least clearly understood concept in the world most.

Chapter 8 : Stacey Dogan | School of Law

intellectual property imperatives of "synthetic biology," a promising new manifestation of biotechnology that enables the design and construction of artificial biological pathways, organisms or devices, as well as the redesign.

Chapter 9 : William W. Fisher | Harvard Law School

The viewpoints of those ten judges were so thoroughly divergent that the court issued six separate opinions, and no explanation of the law garnered majority support. Federal Circuit Judges Disagree Over Contours of Section | Knobbe Martens Intellectual Property Law.