Introduction to Digital Copyright and Online Content Distribution
Basis of US Copyright Law

U.S. Constitution:

[Article I, Section 8]

“The Congress shall have Power...
[Clause 8] To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries...”

Note: The founding fathers did not feel the need to empower Congress to create physical property rights.
Examples of Exclusive Rights

• to reproduce the copyrighted work
• to prepare derivative works
• to distribute copies through sales, rental, lease, or lending
• to perform the copyrighted work publicly (applies, e.g., to plays)
• to display the copyrighted work publicly (applies, e.g., to sculpture)
• digital audio transmission

[These are paraphrases.]
Exception: “4-factors” test for “Fair Use”

- The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes
- The nature of the copyright work
- The amount and substantiality of the portion used in relation to the copyright work as a whole
- The effect of the use upon the potential market for or value of the copyrighted work
Exception: First-Sale Rule

• When a copyright owner sells a copy of a work, he relinquishes control over that copy but not over the work.
• The work cannot be reproduced by the purchaser, but the copy can be loaned, resold, or given to someone else.
• “Promotes progress” by enabling, *e.g.*
  - libraries
  - used book stores
General Structure of Copyright Law

• Copyright owners’ rights stated explicitly.

• General public has no explicitly stated rights, just exceptions to owners’ rights.

• Fair use is a defense against a charge of infringement.

This structure works fairly well for traditional media, particularly books.
Structure is Challenged by Digital Works

- Digital documents are fundamentally different:
  - Copies are perfect.
  - Copies can be made at zero cost.
  - Copying is not necessarily a good proxy for infringement.

- TPSs are imperfect:
  - A perfect TPS could moot fair use: no infringement, no charge, no defense.
  - But no TPS can be perfect in today's computers. General purpose PCs are programmable, and hence TPSs are circumventable (at least by experts).
Three Major “Enforcers” Support a Content-Distribution Business

- Copyright law
- Technical Protection System (TPS)

* Business Model
Dual Doomsday Scenarios

Today’s Rights Holders and Distributors:
TPSs won’t work. Copying, modification, and distribution will become uncontrollable.

Fair-Use Advocates and (Some) Consumers: TPSs will work. Rights holders will have more control than they do in the analog world.
Best TPS is a Great Business Model

“The first line of defense against pirates is a sensible business model that combines pricing, ease of use, and legal prohibition in a way that minimizes the incentives for consumers to deal with pirates.”

Holy Grail: A Great Business Model for Internet Music Distribution

Hal Varian (quoted in C. Mann’s 2000 “Heavenly Jukebox” article): “Maybe Coke will find a way to integrate itself directly into the shows. Or they’ll release the music free on the Internet, except that it will be wrapped in a commercial.” What’s the difference if the Spice Girls are marketed by Coca-Cola or by Virgin Records, soon to be a subdivision of AOL-Time Warner?

2000 Sales by RIAA members: $15B
2000 Coca-Cola Net Operating Income: $20.5B
Fundamental Challenge for any Online Music-Distribution Business

• Consumers expect to pay considerably less for Internet-delivered music files than for physical CDs.

• But Internet-based distribution probably won’t be much cheaper. Rough breakdown of CD-business costs:
  - First-copy: 21.1%
  * Manufacturing: 8.5%
  - Marketing and sales: 49.9%
  - Licensing costs and profits: 20.5%
Your third HW assignment is to write a three-page essay in which you propose a “solution” to the problems of the popular-music distribution industry that have been wrought by technological change (e.g., p2p file sharing).
Reading Assignment For This Week

The following 3 sections of the Digital Dilemma report are required reading:

