

Unless otherwise noted, the content of this course material is licensed under a Creative Commons Attribution 3.0 License.  
<http://creativecommons.org/licenses/by/3.0/>.

Copyright 2008, Bryce Pilz.

The following information is intended to inform and educate and is not a tool for self-diagnosis or a replacement for medical evaluation, advice, diagnosis or treatment by a healthcare professional. You should speak to your physician or make an appointment to be seen if you have questions or concerns about this information or your medical condition. You assume all responsibility for use and potential liability associated with any use of the material.

Material contains copyrighted content, used in accordance with U.S. law. Copyright holders of content included in this material should contact [open.michigan@umich.edu](mailto:open.michigan@umich.edu) with any questions, corrections, or clarifications regarding the use of content. The Regents of the University of Michigan do not license the use of third party content posted to this site unless such a license is specifically granted in connection with particular content objects. Users of content are responsible for their compliance with applicable law. Mention of specific products in this recording solely represents the opinion of the speaker and does not represent an endorsement by the University of Michigan.

Viewer discretion advised: Material may contain medical images that may be disturbing to some viewers.

# Disseminating University IP

Class 10 – November 7, 2008

SI 519 / PubPol 688

Bryce Pilz

Fall 2008

# Schedule

- 2:10 – Intro; Announcements
- 2:15 – Exercise
- 2:25 – Writing Discussion
- 2:35 – Questions from last week / current events
- 2:55 – Election Law
- 3:05 – Student Presentation: Library's and Section 108
- 3:15 – Student Presentation: Educational Fair Use
- 3:30 - Student Presentation: Google Print Library
- 3:50 – Break
- 4:00 – Tech Transfer / Chou Case
- 4:25 – Policy Exercise
- 4:50 – Papers Returned

# Writing Suggestions For 2<sup>nd</sup> Paper

# Use Bullet Points

- Can be used as an introduction to road-map your forthcoming discussion
- Can be used as part of analysis to concisely lay out a series of points
  - Ex) Anonymity on the Internet has the following benefits:
    - Benefit 1;
    - Benefit 1; etc.

# Other Creative Methods

- Numbered lists: (1) point one; (2) point two, etc.
- Summary boxes
- Tables/charts
  - A picture is worth a thousand words

# Use Headings, Sub-headings, etc.

- In legal writing, you should be able to read the headings and fully understand the argument and analysis
- Use headings liberally and it helps you stay on point

# Use the Active Voice!!!

- Active v. passive
  - You should use the active voice
  - The passive voice should rarely be used
- Passive voice = form of “to be” + past participle
- Forces you to be precise; less words; stronger points



# Be Specific With The Law

- This is a class on the law
- Should go deeper than the “CNN level” analysis
- You can still have fun with your topics, but make sure you don’t forget the specifics of the law

# Questions / Current Events

- Defamation – Burden of Proof
- Defamation – Tabloids
- Publicity Rights – Who is a celebrity
- Bilski – Software Patents

# Defamation – Burden of Proof

- U.S.: Plaintiff generally bears burden of proving falsity
- Some old cases, referenced a presumption of falsity, but those have been overturned
- UK – statement is presumed defamatory
  - “a statement that would make an ordinary person modify his opinion of a person as a result of hearing or reading the statement.”

Source: [http://www.public-integrity.org/article/invent\\_index.php?id=645](http://www.public-integrity.org/article/invent_index.php?id=645)

# Defamation – Tabloids

- “I Watched a Wild Hog Eat My Baby” by former National Enquirer editor Bill Sloan, about ‘50’s and ‘60’s:
- “There are two overwhelming reasons why no celebrity of any stature would stoop to suing a gutter-level publication like the Informer even in clear-cut cases of libel. For one thing, the publicity surrounding this type of suit could prove a thousand times more damaging than the original fabrication. For another, the publisher probably didn't have any money to pay damages anyway.”

Source: Sloan, Bill. *I Watched a Wild Hog Eat My Baby: A Colorful History of Tabloids and Their Cultural Impact*. Prometheus Books, 2001

# Tabloids

- This changed in '80's as Tabloids amassed huge assets
- Successful suits from:
  - Carol Burnett (1981)
  - Aretha Franklin (2001)
  - Arnold Schwarzenegger, Tom Cruise, and Nicole Kidman

# Tabloids

- Hired armies of lawyers to read through each article.
  - Know how far they can go
- So, they get sued, but they are good at pushing the lines

Good  
Laugh

# National Enquirer Sues Tabloid for Defamation

Famous Tabloid Gets a Taste of Its Own Medicine



By [Leslie D](#), published Aug 14, 2007

Published Content: 35 Total Views: 0 Favored By: 10 CPs

▶ [Contact](#) ▶ [Subscribe](#) ▶ [Add to Favorites](#)

Embed: `<strong>National Enquirer Sues Tabloid for Defamation</strong><br>The National En`

Font   Font

Rating: 4.7 of 5 ★★★★★

*The National Enquirer* has filed suit against *Gossip Times* magazine after an article was printed alleging that *The National Enquirer* engaged in hiring alien vampires on a large-scale basis.

"We cannot believe that a magazine would print such a story," said Kate Lombard, Public Relations agent from *The Enquirer*, "it is very irresponsible reporting to print stories that have no factual basis."

The disputed article was printed in March 2007. The article alleges that 97% of *The Enquirer's* employees are actually aliens from an undiscovered planet, and that they also engage in vampirism as a means of sustenance.

"The story is not unfounded," countered Erica Jones, employee of *Gossip* and author of the article, "we followed up on an anonymous tip which we found is grounded in fact."

The anonymous tip came in January, when a caller phoned the *Gossip Times*, alleging that *The Enquirer* is comprised of a bunch of blood-sucking jerks from another planet.

Source: [http://www.associatedcontent.com/article/340528/national\\_enquirer\\_sues\\_tabloid\\_for.html](http://www.associatedcontent.com/article/340528/national_enquirer_sues_tabloid_for.html)

# Right of Publicity - Celebrities

- Varies from state to state
- Many states say “famous or well-known person”
- Questions: time frame, location, outside of specialty
- Many states require use for a commercial purpose (so this typically restricts the set of plaintiffs to people that easily qualify as “celebrities”)



# Bilski

- Recall: “method for hedging risk in field of commodities trading” (based on weather analysis – did not require use of computer)

Source: *In Re Bilski* US PTO decision, available <http://www.cafc.uscourts.gov/opinions/07-1130.pdf>

- Recall: Patent act says “processes” are patentable subject matter
- Bilski: what types of patent claims constitute “processes” under the patent statute

# Bilski

- “machine or transformation test”
- Process is patentable if it: (1) is tied to particular machine or apparatus, or (2) transforms a particular article into a different state or thing
  - “test to determine whether a process claim is tailored narrowly enough to encompass only a particular application of a fundamental principle rather than to pre-empt the principle itself”

# Bilski


- Little guidance as to the “tied to a particular machine or apparatus” Source: 35 U.S.C. § 101
  - Likely that a general use computer is not sufficient
  - This would impact a lot of existing patents (such as perhaps Google’s page rank patents)
- Transformation? Manipulating data can satisfy this test if the process sufficiently identifies the type, nature, and source of the data
  - Mere data gathering is not enough

# Bilski

- May have a big impact on existing software patents that were drafted with a different standard in mind
- But, likely that patent attorneys can draft claims for most every software application that will satisfy the Bilski test
  - See the Apple Dock Patent (claimed as a “system”)
- Obviousness will likely remain the biggest hurdle

# Election Laws

## DAILY KOS

<b>DKOS DAILY TRACKING POLL</b>	<b>dKos Polls</b>	<b>DAILY KOS POLITICAL SCOREBOARD</b>
<b>OBAMA 51</b>	CA-04-10/26	
<b>MCCAIN 45</b>	FL-25-10/26	
Results for 10/31	NV-03-10/26	
Research 2000	WA-08-10/26	
10/28-10/30, MoE 3%.	FL-21-10/26	
<b>Internals   Trendlines</b>	MD-01-10/26	
	WV-Pres-10/26	(More...)

sponsored by [ecodrivingusa.com](#)

for advertising info, write [kos@blogads.com](mailto:kos@blogads.com)

Advertise on the **Liberal Blog Advertising Network**.

Hate ads? [Subscribe](#).

THE STATE of THE NATION

Menu

- ★ Home
- ★ Diaries
- ★ dKosopedia
- ★ Search
- ★ Create account
- ★ Login
- ★ Lose Your Password?

About

- ★ About
- ★ Advertising
- ★ Contact Us
- ★ Daily Kos Store
- ★ FAQ
- ★ Candidates

Recommended Diaries

**Stay The F\*ck In Line.**  
by [JeffLieber](#)  
241 comments

**Florida GOP County Chair: Help! Black People are Voting!!!**  
by [fladem](#)  
439 comments

**An 'Idiot Wind'**  
by [teacherken](#)  
188 comments

**Thank You Markos Moulitsas**  
by [millwx](#)

### Universal Registration

by [georgia10](#)  
Fri Oct 31, 2008 at 07:30:03 AM PDT


Last week, the always insightful Rick Hansen of the [Election Law blog](#) penned a piece in Salon regarding the need for a simplified, fair, and universal voter registration system. The entire piece is a must read, but this part was particularly pragmatic, and it reiterates ideas that many of us in the election reform community have been advocating for a while:

The solution is to take the job of voter registration for federal elections out of the hands of third parties (and out of the hands of the counties and states) and give it to the federal government. The Constitution grants Congress wide authority over congressional elections. The next president should propose legislation to have the Census Bureau, when it conducts the 2010 census, also register all eligible voters who wish to be registered for future federal elections. High-school seniors could be signed up as well so that they would be registered to vote on their 18th birthday. When people submit change-of-address

**Premium Ad**  
[Advertise here!](#)

**Second ads**  
[Advertise here](#)

**Advertisers**  
**Education Votes**



SEE A SIDE BY SIDE

Source: <http://www.dailykos.com/>

# DailyKos

- Issue: Whether DailyKos.com failed to register as political action committee
- PAC = an organization that receives contributions or makes expenditures for purpose of influencing a federal election, aggregating over \$1,000k per calendar year

# DailyKos

- Federal Election Commission said the “media exemption” applies to DailyKos
  - Available to general public
  - Not owned or controlled by a political party
  - Provides political commentary, akin to editorials

# Vote Swapping

- First Amendment Protection?
- What exceptions would we make to the First Amendment?



# Vote Swapping

- Ruling: activities involved the discussion of people's opinions on political campaigns and on candidates, which are protected by the First Amendment
- Differs from vote buying

# Election Law

- Michigan law prohibiting political t-shirts and pins
- Upheld under a First Amendment challenge
- Election laws are typically content based, so have to survive strict scrutiny
  - Compelling government interest;
  - Narrowly tailored to that interest;
  - No less restrictive means.

# Student Presentations

- Library Uses, Section 108
- University Fair Use
- Google Library

# Tech Transfer

- Pre-1980 – Government owned all federal funded inventions
- 1980: Bayh-Dole – Universities own federally funded inventions and can license them
  - Must reserve research rights and gov. rights
  - Share royalties with inventors
  - Require that licensees diligently seek to use the technology and make the products in U.S.

# Tech Transfer

Most widely known university IP (other than university logos) that has been licensed?



BY: Roadsidepictures ([flickr](#))  
<http://creativecommons.org/licenses/by-nc/2.0/deed.en>



# Other Companies From Universities

- Stanford: Google, Sun Microsystems, Yahoo, Silicon Graphics, Netscape, Cisco
- Much of biotech industry
- UM Start-up Healthmedia purchased last week by J&J

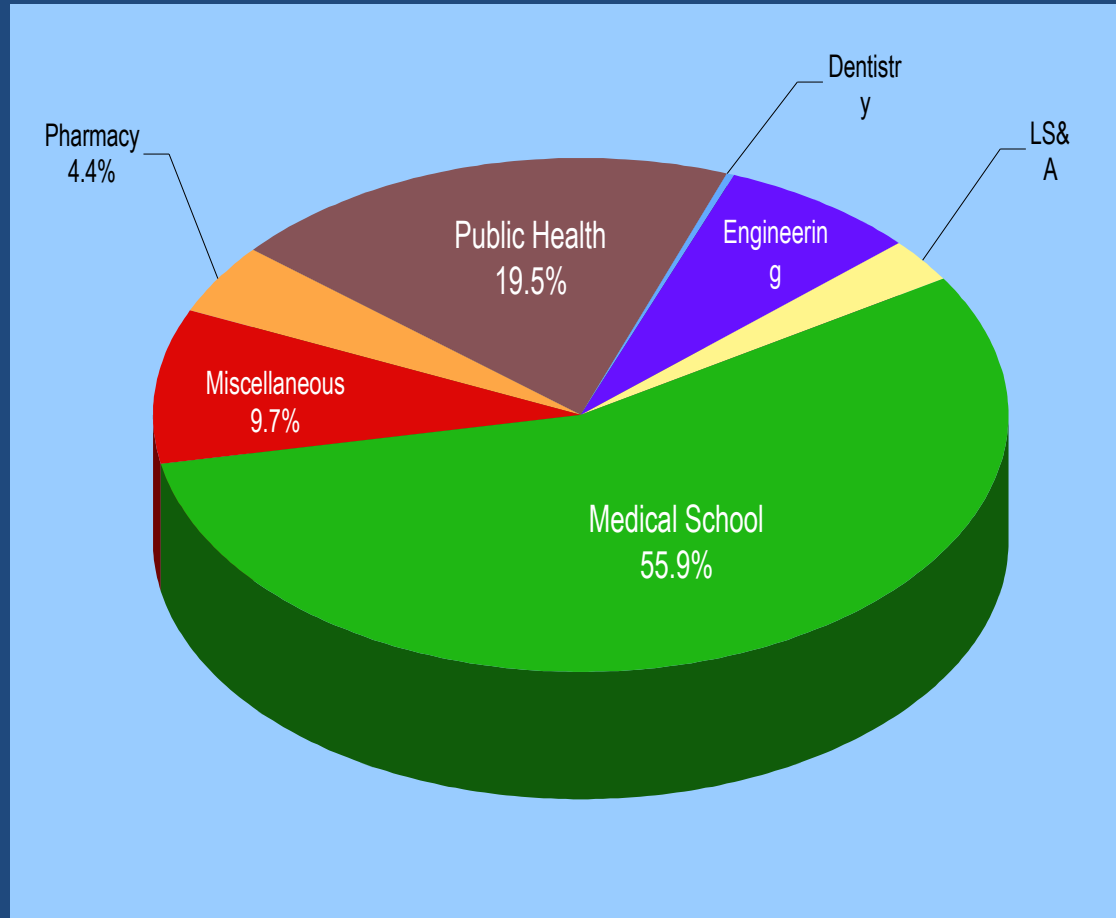
# UM Tech Transfer

# Principles

- Enhance likelihood that discoveries will reach the public
- Promote new research collaborations for faculty
- Help attract entrepreneurial faculty to the University
- Fund new research and teaching programs
- Stimulate economic development
- Conclusion - Main goal is to have the outside world use our inventions for the public good.



# 2007 Revenues Received



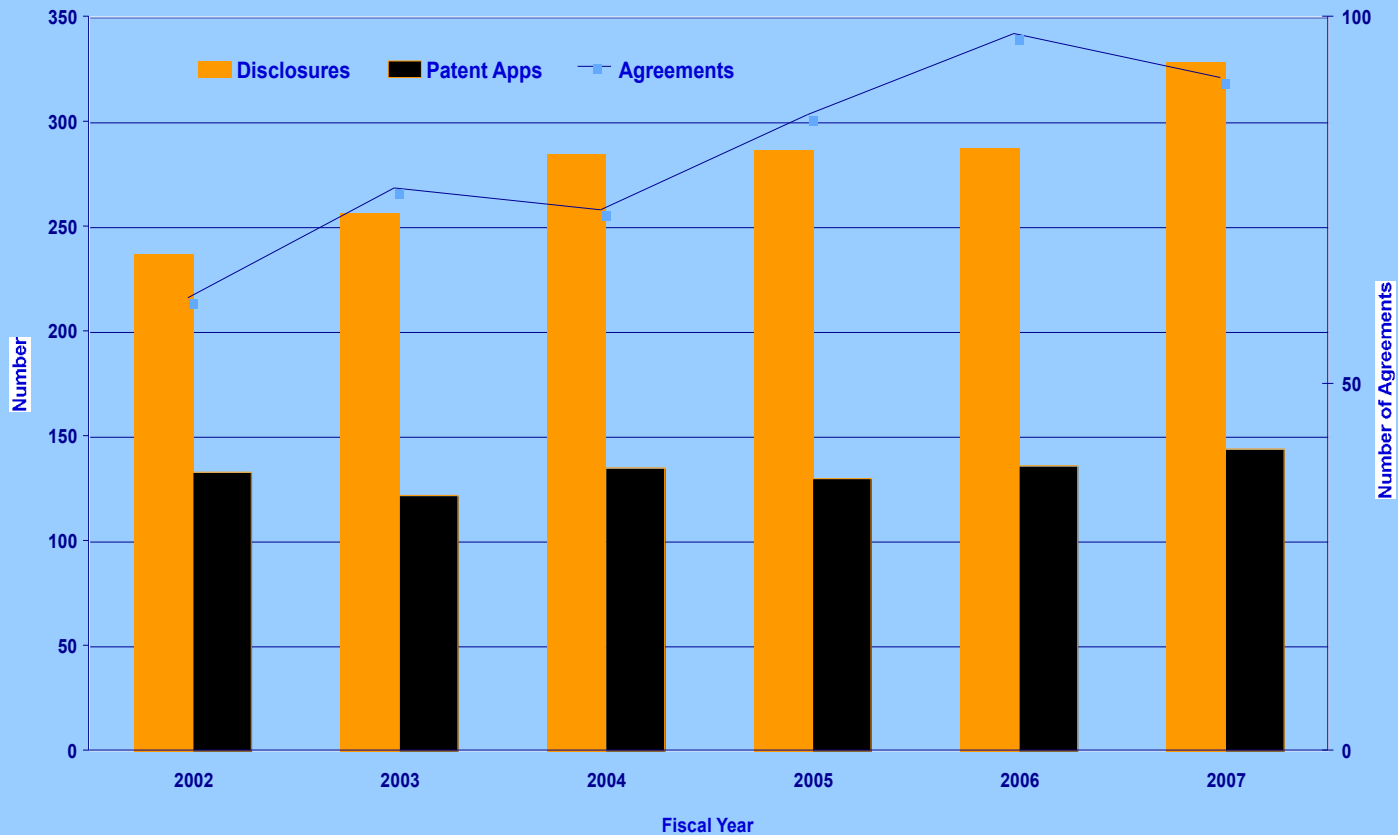
Source: University of Michigan Office of Technology Transfer

# Faculty Revenue Sharing

- Revenues are shared with faculty after recovery of expenses:
  - For first \$200,000 of net revenue:
    - 50% to inventors
    - 17% to department
    - 18% to school or college
    - 15% to central administration (hopefully for further investment)
  - After \$200,000: 30%, 20%, 25%, 25%

# Disclosures, Patent Applications, and Agreements

Source: University of Michigan Office of Technology Transfer



# Criticisms

- Faculty: Universities shouldn't be worried about commercializing
  - Distracts basic science research
- Faculty: University should negotiate better deals and get more money
- Faculty: I should own my inventions

# Criticisms

- Local community: Universities should give technology away for free
- Corporations: Universities move too slow and are risk adverse
- Scholars: Universities are over-aggressive in patenting and their patents stifle innovation
- Public: maximize revenues; decrease tuition

Ways to make it better?

# Chou

- Determining inventorship is very difficult in a University setting
- Lots of collaboration between individuals with different assignment obligations and/or students
- “inventorship” under patent law is legal determination
  - Not as easy as naming a contributor to an article

# Chou

- District Ct – Chou could not sue to be named as inventor, because she had assigned away her rights to UC
- Issue: whether putative inventor who lacks a potential ownership interest in a patent can sue



# Chou

- Chou argued:
  - Never assigned to UC
  - Entitled to 25% royalties if named as inventor
  - Should be a true inventor, therefore should have standing to sue
- Court: Chou should have right to assert her interest both for her own benefit and the public interest in correct inventorship

# Chou

- Did Chou have a contractual obligation to UC?

# Group Drill

- UM faculty member creates software that she uses in the course of her research to collect and analyze genetic data
- Software was created in the faculty member's department's computer lab
  - Only members of this department can use the computer lab
- Software not funded by an outside party