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Dedications

To the many students over the years
who have shown a passion for learning
— John

To Mom, Dad, and Karen
— Doris

To my parents and my six siblings
— Greg

To my parents
— Peter
Preface

This book owed its origin to a visit Leslie Levin, the former Executive Acquisitions Manager at LexisNexis, paid to Michigan State University College of Law. At that time, one of us directed the Intellectual Property and Communications Law Program at the Law College, while another visited there from the historic intellectual property law program at John Marshall Law School in Chicago. The two of us shared equal frustration about the challenge of including a survey course in the intellectual property law curriculum. Because most survey courses tended to focus on the “Big Three” of intellectual property law—and sometimes the Big Three and a smaller fourth—professors who taught copyright, patent, and trademark courses often had to re-teach materials that a survey course had already covered. Like it or not, many students also had to re-learn materials from not only the previous semesters, but often also the same semester.

We quickly realized, if a book in this area were to be successful, it had to cover a wider variety of intellectual property rights, given the increasingly expansive views on intellectual assets, the attorneys’ growing need to understand the global business environment, and the large number of foreign students studying intellectual property law in the United States. So, we assembled a team of authors who not only had experience in planning intellectual property curriculum at their respective law schools, but also had frequently taught international intellectual property law classes. Although this book was not intended for those classes, having a global focus and understanding would make the project unique, timely, and attractive.

During an initial workshop discussing the casebook, one of us introduced to the group the “ten percent rule,” which is commonly taught in M.B.A. programs to suggest the ideal amount of improvement or innovation that a new product should have if it were to succeed on the market. Taking this rule to heart, this casebook has included a balanced coverage of the “old chestnuts” in intellectual property law as well as the recent cases and “hot topics” covered in mainstream media. Apart from trade secret, patent, copyright, and trademark laws, which Parts I to IV will cover, the book has also devoted significant lengths to other issues that tend to get short shrift in an intellectual property survey course, such as the right of publicity, protection of product design, and the limits on intellectual property protection. Parts V and VI will examine these issues in turn.

This casebook includes several unique features. First, each section starts with a box question that enables students to stay focused when reviewing materials before class. Second, statutory provisions are included in separate boxes to make it easier for instructors to cover the materials. Although these provisions are available online or in statutory supplements, students in a survey course rarely need to study them in great detail and depth. Third, where available and relevant, historical or contextual background information has been provided alongside the case excerpts. Such information will enable students to better understand the included appellate cases, which often briefly recite the facts or have been edited down to enhance teaching effectiveness. Fourth, the book includes a wide variety of notes, questions, and problems to make it suitable for different pedagogical approaches and assessment needs. Finally, the materials seek to highlight the unique features of U.S. intellectual property laws. The study of these features will pave the way for more advanced coursework in the intellectual property area.
Preface

While we came to this project with similar interests, perspectives, and approaches, we inevitably share some differences. Thus, we have tried our best to “harmonize” our views to provide an integrated whole. Principal responsibility was divided as follows: John authored Parts I, V, and VI, Greg authored Part II, Peter authored Part III, and Doris authored Part IV. We nonetheless reviewed the manuscript several times to ensure that all the parts talk to each other.

To enhance readability, we edited down the materials and deleted, without indication, virtually all the footnotes or citations in the excerpted texts. Where appropriate, we also removed the headings or section numbers in cases and secondary sources. When edits were made, we used ellipses to indicate deletion of text and brackets to provide additional explanation or to improve the flow of the material. We took liberty in fixing minor typographical and grammatical errors. The original numbering of the footnotes was retained in brackets, and some citations were updated in full, abbreviated, or corrected to enhance referential value.

We hope you will find the materials useful, interesting, and engaging. We welcome comments and suggestions for improvements in future editions.

JOHN T. CROSS
DORIS ESTELLE LONG
GREG R. VETTER
PETER K. YU
2015
Acknowledgments

A first edition book of this size requires a lot of assistance, support, and inspiration. Over the years, we have accumulated a mountain of debt. We all thank Leslie Levin and her colleagues for trusting us with this project and convincing us that LexisNexis is the right home. We are grateful to Sarah Burstein, Shontavia Johnson, Patricia Judd, and Jason Rantanen—our “readers” in a casebook workshop held at Drake University Law School, which closely examined an earlier draft of the manuscript. We are also indebted to William Ford and Daryl Lim for conducting test-runs of the book in the classroom; and Christine Frost, Cristina Gegenschatz, and their colleagues at LexisNexis for making our ideas and expressions available in a tangible medium.

In addition, John is deeply grateful to the many students who provided insight into early drafts of the book and the suggestions they made for improvement. He also thanks Leah Smith, Megan Diffenderfer, and Kylie Parker, all of whom contributed invaluable research assistance and exhibited yeoman-like patience when they had to deal with some of his failings. Finally, he must thank his colleague Lars Smith, a colleague who shares his love for the intellectual property field and provided excellent insight into many practical aspects of the course.

Doris owes a debt of gratitude to every one of her classes whose insights have served a critical role in the development of these materials. She must also thank Lisa Carroll, Bernadette Savarese, Jeff Gaster, Ross Herseman, Monalee Shah, Katie Pimentel, and Allison Schneider, research assistants extraordinaires who contributed to the development of these materials. Special thanks go to William Ford, Daryl Lim, Patricia Judd, Shontavia Johnson, and Sharon Sandeen, whose practical suggestions regarding the teaching of these materials were invaluable. She could not ask for better collaborators than Peter Yu, John Cross, and Greg Vetter, who made this text truly a joint effort and a joy to create together. As always, special thanks go to her sister Karen for putting up with the mess and the countless hours of chaos that are the result of any attempt to create new learning materials; to her Mom for teaching her the value of creativity; and to her Dad, the first great teacher in her life.

Greg thanks his students first and foremost. Even after he has visited at three other law schools during his 13 years as a law professor, his students at the University of Houston Law Center (UHLC) remain the basis for these materials and hold a special place in his heart. He also thanks his deans and colleagues at UHLC, in particular his colleagues within the Institute for Intellectual Property & Information Law: Paul Janicke, Craig Joyce, Ray Nimmer, Sapna Kumar, and Jacqui Lipton. Colleagues outside of UHLC who have been particularly supportive include his three esteemed and cherished co-authors—Peter Yu, John Cross, and Doris Long—and, more generally, the wonderfully supportive community of scholars within the academy studying intellectual property and information law. In addition, he thanks Paul Janicke for reviewing several of the patent law chapters. Finally, several research assistants provided incredibly valuable help: Craig Walter, Christi Guerrini, Seth Jaffee, and Seth Cockrum. Their professional and effective assistance and good humor are greatly appreciated.

Peter thanks his deans, colleagues, and students at Drake University Law School for their support, insights, and camaraderie. He is also grateful to Wayne and Donna Kern for
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creating the endowed chair that enabled him to devote a large part of his time in the past eight years to research and writing. This book was at the proofs stage when he was making transition to join Texas A&M University School of Law, but the materials could not have been written without the generous support from Drake as well as the constant interactions he had with his students there, who taught him as much as they learned from him. Finally, he would like to thank Patricia Judd for going beyond the call of duty to provide very detailed and helpful comments on an earlier draft of the copyright law chapters; and Cory McAnelly for his excellent research and editorial assistance as well as for his generous offer to review these chapters even after he has graduated.

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