Conlanging and US Intellectual Property Law

Sai
http://s.ai
G+, Twitter, FB, etc: saizai

Disclaimers:
I am *not* a lawyer (yet).
I am not *your* lawyer.
I am not giving any legal *advice or opinion*.
LCS' lawyers are not *your* lawyers, and not giving legal *advice*.
The memo & talk only address United States law.
I will gloss over lots of details & exceptions.
If in doubt, read the memo yourself, or get a lawyer. ;-)
The memo belongs to Dentons, and is used with their permission.
We got real lawyers to address this

Dentons US LLP — *pro bono!* (Thanks!)
- Samuel Fifer (copyright & trademark)
- Heather Khassian (patents)
- Marc Mandel (corporate, securities and IP)

Memo is now public!
- See LCC6 schedule page.

Few lawsuits = "maybe" & "it depends"…

Q&A at end of talk
How might IP law affect conlangers?

Can you:

- stop others from (mis)using your conlang?
- sell a conlang?
- sell a grammar book of a conlang?
- make a conlang based on others' work?
- sell things based on a popular conlang?
- require (or prevent) attribution to you?
- get sued for conlanging? (realistically)

…
US Intellectual Property Law 101

Copyright ©, ®
✓ Creative work
  Fixed form
  Original
✗ Utilitarian
  Ideas
  Facts of the world
! Fair use exception
  *Automatic on creation*
  Registration optional
US Intellectual Property Law 101

Trademark ™

✓ Identifies source of service/product
   Commercial use in specific area

✗ Dilution, confusion, or conflict
   Merely descriptive
   Generic

! Maintained in active use
   Defended (cf. "Kleenex")
   Registration optional
   Trade dress ("look and feel" identity)
US Intellectual Property Law 101

Patent

✓ Useful
  New
Not obvious
Not disclosed (1 year limit)
Methods OK (... in US)
  ... if it's for an otherwise patentable thing
✗ Creative / artistic works
❗ Registration required
US Intellectual Property Law 101

Moral rights, unjust enrichment, etc.

✓ Your personal identity
~ Association with your work
✗ EU style *droit moral*
! Very weak in US
Conlang parts from a lawyer's POV

Specific "works" (grammars, poetry, etc) & anything associated with commercial products Dothraki, Klingon, Na'vi, Quenya...

Vocabulary *per se*

Glyphs

Compilations

  Creatively *arranged* vocabulary

Grammatical rules

Fonts (the software, not the glyphs)

Association with the creator
Conlangs: Copyright

✓ Specific, fixed expressions
   Books, poetry, music, etc
   Grammar documents
   \textit{(not the content)}

~ Creative compilations (e.g. a dictionary)
   ✓ Creative glosses / definitions
   ! Someone else can re-compile it

\textit{A posteriori} work

✗ Idea / grammar
   Individual vocabulary
   Functional / useful aspects
Language is meant to be used
Conlangs: Trademark

✔ Identify *single source of goods & services*
  Branding

✗ Language names

! Based on "relevant" public
  Limited to area of use
Conlangs: Trademark

If it's making money...
Conlangs: Patent

✓ Identify *single source of goods & services*
  Branding

✗ Morse code
  Abstract ideas, algorithms

! Prior art
  Novel, not obvious, *and* not published
  "Obvious" per experts in the field (us!)

EU patent law *very* different

? Process of *making* a language
Conlangs: Patent

Novel & non-obvious? Good luck...
Conlangs: Moral rights, etc

Do you want credit?
Do you deserve credit?
Recap: how does it affect you?

Can you:

- stop others from (mis)using your conlang?
- sell a conlang?
- sell a grammar book of a conlang?
- make a conlang based on others' work?
- sell things based on a popular conlang?
- require (or prevent) attribution to you?
- get sued for conlanging? (realistically)

…
Three years ago, when asked a legal question, you could answer, in all honesty, "I don't know." Now you can say with great authority: "It depends."

- UVA Law School professor, to a graduating class

Q & A*

* ("A" ≠ "Advice")
Culture, not law

Our mores:

- share openly
- improve our craft
- use with permission
- improve outside perspectives
- don't prosleytize
- educate and encourage new people

be excellent to each other