Spyware

Thoughts on Intellectual Property
Spyware Actions

- Data Capture
- Browser Hijacking
- Pop-ups
- Icon and Toolbar Modification
- System Modification
- Application Modification
Copyright Claims

• Data collection
  – Data unprotected
  – Selection and arrangement unlikely

• Derivative works
  – Desktop
  – Browser display
  – Application code
Trademark Claims

• Browser Display
  – Advertisement triggers
    • Initial interest confusion
  – Advertisement juxtaposition

• Browser Operation
  – Hijacking
  – Slowing
Patent Claims

• Making or Using
  – Modification
  – Interoperation
  – Exhaustion
  – Implied License
  – Repair and Replacement
Concerns

• Standing
  – Vendor claims
  – No consumer relief
• Differentiation
  – Routine downloads
  – Malicious downloads
• Consent
  – Bailments?
Trespass Claims

- Chattel at issue
  - Hardware
  - Data
  - Software
    - Bailment?
- Authorization
  - Consent
  - Notice
Endemic Problems

- Derivative Works
- Implied Licenses
- Previous Examples
  - Linking & Framing
  - UBE (“spam”)
- Asymmetry
  - Technological capability
  - Legal claims
  - User expectations
Thank You

Questions Welcome