



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

