

IP and the INTERNET

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- Business name trade name
- Product marks and logos trademark
- Software, texts, music
art, creative works copyright
- Inventions patent

**Do not forget
trade secrets**

TRADEMARKS

What's Trademarkable?

Any identification of goods or services to indicate source and distinguish from goods or services of others.

What's Trademarkable?

Word

Name

Symbol

Design

Color

Sound

Smell

Combinations

What's Trademarkable?

- **Trade Dress - combination of many elements that function together as a source identifier to create an overall “look”**

Generic

Descriptive

Suggestive

Arbitrary/fanciful

TM Exclusion Rights

- **Using the same or similar marks on similar goods or services**
- **Geographic**
- **Field of Use**
- **Expansion into area or fields of use**

TM



- **Registration**

- **Common law rights**

- **First use**

**If I get a trademark
registration for “x”
on the Internet,
then no one else can
use x on the Internet.**

**If I have a U.S.
registration,
then I beat anybody
who doesn't have a
registration.**

**If I have a long
established mark,**

**I don't have to worry
about registrations.**

**If I get a U.S.
trademark,**

**then I don't have to
worry about foreign
registrations.**

**If I get a U.S. trademark,
then I have worldwide
protection.**

**I've got trademark
protection,**

**no one can copy my
product.**

**I registered my corporate
name with the Texas
Secretary of State,**

**so I can use my company
name anywhere.**

**I got a domain name,
so I have trademark
protection.**

**The best marks are
the ones that
describe my goods
and services.**

COPYRIGHTS

What's Copyrightable?

- **books, articles, poems, etc.**
- **musical works**
- **dramatic works**
- **pictorial, graphic and sculptural works**
- **web pages**
- **advertisements**
- **photographs**

What's Copyrightable?

- **paintings**
- **technical drawings**
- **motion pictures**
- **audiovisual works**
- **sound recordings**
- **architectural works**

Copyright Exclusion Rights

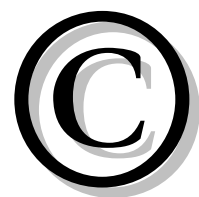
- **Reproduce**
- **Prepare new works**
- **Distribute**
- **Publicly perform**
- **Publicly display**

Life of authors (latest)
+ 70 years

**Works for Hire,
Anonymous**

**95 years from publication
or**

120 years from creation



Registration

Creation of the work

**If I don't know that a
work is copyrighted,
then I have no risk.**

If I buy a video,

**I can charge money
for showing it.**

**I can copy magazine
or newspaper articles
for use in the office.**

**I can copy
magazine or
newspaper articles
for use in research.**

**You must be a citizen
of the United States to
claim the benefits of
U.S. copyright laws.**

**If I modify a
copyrighted work,**

**I own the copyright in
the new work.**

**If I write my own stories
using characters from
another work,**

I own the copyright.

**To obtain a copyright on
a work,**

**you must register with the
Copyright Office.**

I did not register a
copyright

so I lost my rights.

I can legally copy a
work

if I give full credit to the
copyright owner.

I'm giving them free
advertising

so it's not a violation.

**If it doesn't say “©” or
“copyright,”**

then I can copy it.

**I can legally copy a
work**

**if I don't copy all of
it.**

**They can't sue me for
copying**

**if they did not register
the copyright.**

If a song is on Napster
or a similar website,

then I can make as many
copies as I want.

If it's on the Internet,

I can copy it all I want.

I got it by email,

**so I can do what I
want with it.**

If I don't charge for it,

**I don't violate
copyright.**

**If they do not defend
their copyright,**

they lose it.

**You can't use that
name,**

it's copyrighted.

**Mailing your work to
yourself is just as good
as copyright
protection.**

I'm a DJ at a dance club.

I can play *any* song I want

**because the club has an
ASCAP license.**

**My copyright
registration will
prevent others from
copying my idea.**

**We paid John Smith to
write this software for
us.**

We own it.

We were smart. We paid John Smith to write this software for us, and he agreed that it is a “work for hire.” ...

We own it.

I can reverse engineer or
disassemble software
with no risk of liability.

**I can modify
software**

**with no risk of
liability.**

I can give my software
to my sister.

Software can be loaned
just like a book.

If everybody else is
using these materials,

then I can too.

**TRADE
SECRETS**

SECRET

COMPETITIVE VALUE

If I don't know that
someone else has rights
in a information,

then I have no risk.

**If I don't know that
information has been stolen
from someone else,**

then I have no risk.

If it is not covered by a
patent,

then it is not secret.

If you cannot get a
patent on the
invention it is not
worth anything.

Their secrets did not
help us because we do
things differently than
they do.

PATENTS

What's Patentable?

- **Any new and useful**
 - **Process**
 - **Machine**
 - **Method of manufacture**
 - **Composition of matter**
 - ***Improvements* on existing things**
- **Significant recent case law in patent law now also allows:**
 - **Software**
 - **Methods of doing business**



Patent Exclusion Rights

- Make
- Use
- Sell
- Import

20 years

from date of filing

No application

Provisional application

Standard application

Patent

Patent pending

Patent notice

If I get a patent,

**I then have the legal right
to make, use and sell my
invention.**

**If I add on to or
improve a patented
invention,**

then I don't infringe.

**If I don't intentionally
infringe a patent,**

then I have no risk.

**If I send a written
description of my
invention to the Patent
Office,
then I have protected my
invention.**

**I've never seen
anything like my
invention on the
market.**

It must be patentable!

**A patent only covers
the actual invention
that the owner makes
or describes.**

**If I read the abstract of
a patent,**

**I now have a safe
understanding of the
patent.**

**That idea is so
simple it can't be
patentable.**

**If I have a patent,
then I can't infringe
someone else's patent.**

**If they don't have a
patent,**

**then they must infringe
my patent.**

**They don't make anything
and**

**the invention described
doesn't work –**

**I'm not worried about
their patent.**

**The devices have been
around for years --**

their patent is no good.

**My patent gives me
worldwide
protection.**

I have a U.S. patent,

**so the U.S. will police
it for me.**

**I have a U.S. patent,
so everyone must
know about it and
will not infringe it.**

**If I publish a paper
about my invention**

**I won't lose any
patent rights**

**I filed a patent
application**

so I am protected.

Specific Patent Cyberspace Law Issues

- Methods of Doing Business
- Validity/Enforcement
 - Patent Office Problems
 - Prior Art

Specific Patent Cyberspace Law Issues

- Value as Business Tool
 - Defensive strategy
- Reverse Bidding
 - Priceline.com
- One Click Shopping
 - Amazon vs. Barnes & Noble

Specific Copyright Cyberspace Law Issues

- Copying Web Pages
- Linking and Framing
 - Outlinking (HREF)
 - deep linking
 - Inlinking (IMG)
- Web Page Design
- Digital Millenium Copyright Act

Specific Copyright Cyberspace Law Issues

- European Union Database Protection
- Music
 - MP3
 - NapsterMusic
- DVD
 - posting security code

Specific Trademark Cyberspace Law Issues

- Domain Name vs. Trademarks
 - differences
 - registration
 - disputes
- Cybersquatting and Reverse Cybersquatting

Specific Trademark Cyberspace Law Issues

- Linking

- sponsorship
- affiliation

- Diversion

- buried meta-tags
- search engines

Three Areas of IP Management for Your Dot Com Business

- Prosecution - Seeking patent, trademark and copyright registration protection
- Litigation - enforcement and defense of IP rights
- Transactional - transfer of IP rights through various instruments
 - Assignments, licenses, service agreements, security interests, etc.