

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

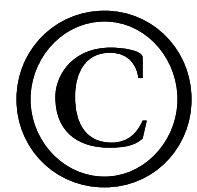
- **Reproduce**
- **Prepare new works**
- **Distribute**
- **Publicly perform**
- **Publicly display**

**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

Secrecy Factors

- extent known outside the business
- extent known by employees
- extent of measures taken to maintain secrecy

Competitive Value Factors

- value to owner and competitors
- effort or money expended in developing
- ease or difficulty of properly acquiring or duplicating

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.

ELECTRONIC SIGNATURES

- The Uniform Electronic Transactions Act (UETA)
- The Electronic Signatures in Global and National Commerce Act
- The Uniform Real Property Electronic Recording Act

Types of Digital Signatures

- autograph
- fobs and credit cards
(swiping)
- digital certificate

Some Website Liability Issues

Copyright Infringement

Framing another site's
content

Trademark Infringement

- Using TMs as meta-tags to attract traffic
- Displaying TMs in sponsored ad
- Use of competitor's mark as a search term ???

Defamation

- Statements or postings in your discussion forum
- Comply with the Digital Millennium Copyright Act (DMCA) -- procedures and safe harbors
- Post and enforce a strong online policy that prohibits defamatory statements and other undesirable content.

Far away jurisdiction

- *Zippo*
- Bad -- interactivity (e.g. an e-commerce shopping cart)
- Good -- informational advertising