



Mark Twain: "The reports of my death are greatly exaggerated."

# Chapter 7.5

## Intellectual Property Content, Law and Practice

# Categories of IP Protection

## 4 different ways that you can get sued.

### 1. Patents

- Protect certain novel, useful and nonobvious inventions having a utilitarian function

### 2. Copyrights

- Protect creative expression in any fixed medium (including ideas for creative expression).

### 3. Trademarks

- Confer exclusive rights in any word, symbol or device that serves to identify the source or origin of goods or services

### 4. Trade secrets

- Protect commercially valuable information whose contents are secured from public knowledge and disclosure

# IP Content of Video Games

- ▶ Patent examples
  - Hardware technology, media on which game is recorded, and software that enables game to perform its functions
- ▶ Copyright examples
  - Software, artwork, storyline, characters, props, costumes, text, dialogue, sound effects, music
- ▶ Trademark examples
  - Business name of the developer and publisher, game title, mascots (Mario and Sonic), designs, unique packaging
- ▶ Trade secret examples
  - Confidential know how used to program, budgets, secret projects, contract terms

# Patents

## ▶ Works Protected

- Inventions and processes protected by utility patents can be “any new and useful process, machine, manufacturer or composition of matter, or any new or useful improvement thereof...”
- So-called “method” patents are utility patents that cover computerized processes and functions
- The design of physical objects, such as the Xbox, can be protected separately by a design patent

# Patents

## ▶ Standards

- To qualify for utility patent an invention must be:
  1. New
  2. Useful
  3. Nonobvious
    - Nonobviousness requires that the invention be sufficiently different from known technology and knowledge so as not to be obvious to a person with ordinary skill in the field of the invention.

# Patents

## ▶ Ownership

- In general, the inventor is the owner of the patent
- The inventor may assign rights to the invention to others, such as the inventor's employer, through written agreement
- They may be multiple inventors in group works
- Registration is essential to secure patent rights

## ▶ Exclusive Rights

- The patent owner can exclude others from making, using or selling the patented invention or objects embodying the patented invention

# Patents

## ▶ Duration

- A utility patent is granted for 20 years from the date the application is filed
- Patents issued prior to June 8, 1995, exist for 17 years from the date the patent is granted
- The patented invention may be freely copied once the patent expires



# Copyrights

## ▶ Works Protected

- Almost any recorded original expression such as:
  - Literary works
  - Musical works (including lyrics)
  - Dramatic works (including music)
  - Pantomimes and choreographic works
  - Pictorial, motion picture, graphic and sculptural works
  - Sound recordings
  - Architectural works

## ▶ Works Not Protected

- Ideas, titles and names, facts

# Copyrights: Standards

- ▶ A copyright has 2 requirements:
  1. Originality and “fixation in a tangible form”
    - To be original, the work must not have been copied by the author and have a small level of creativity
  2. The fixation requirement is met if the work is recorded in any medium such as:
    - Text, videotape, photograph, sound recording, or CD
    - Not unusual to have “pitches” include or even require a physical media component (storyboard, screenplay, formal proposal document).

# Copyrights

## ▶ Ownership

- Ownership of a copyright belongs to author or authors of the work
- The author is generally the creator of the work, but certain works made under contract as “works for hire” are owned by the person contracting for the work
- Registration is not required but confers enforcement rights

## ▶ Exclusive Rights

- A copyright owner has five exclusive rights:
  1. Reproduction right (copy, duplicate or imitate)
  2. Modification right
  3. Distribution right
  4. Public performance right
  5. Public display right

## ▶ Moral rights are granted to visual artists to prevent improper attribution and protect the integrity of the work

# Copyrights

## ▶ Duration

- For works created by an individual or individuals after January 1, 1978, the copyright lasts for the life of the author plus seventy years
- Copyrights in anonymous works and works made for hire exist for a period of 95 years from the date of first publication or 120 years from the date of creation, whichever is sooner

# Trademarks

## ▶ Works Protected

- Any word, symbol, name, slogan, picture, design, shape, color, sound or smell that serves to identify the source or origin of goods or services can be a trademark
- A service mark is a trademark applied to services instead of products

# Trademarks

## ▶ Standards

- A trademark must be capable of distinguishing the owner's goods or services from the goods or services of others
- The relative enforcement strength of a trademark is determined on the basis of the degree of such differentiation:
  1. Arbitrary or coined
  2. Suggestive
  3. Descriptive
  4. Generic
- Success of a trademark can also be its downfall in common culture ( Jello ).

# Trademarks

## ▶ Ownership

- A trademark is owned by the first party to use it in connection with the goods or services
- Registration is not essential but establishes important enforcement rights

## ▶ Exclusive Rights

- A trademark owner has the exclusive right to use the trademark in connection with specific goods or services
- Subsequent users of the same or similar mark are deemed infringers

# Trademarks

## ▶ Duration

- A trademark continues as long as it remains in use
- Federal registrations are subject to renewal every ten years



# Trade Secrets

## ▶ Works Protected

- Each state has its own laws, but many have adopted versions of the Uniform Trade Secrets Act
- The UTSA provides that information that derives “independent economic value” from not being publicly known and whose secrecy is properly guarded is protected from unauthorized use by others

# Trade Secrets

## ▶ Standards

- Trade secrets must have commercial value and **remain secret**
- There is no requirement that they be recorded and there is no provision for registration
- Unlike patents and copyrights, trade secrets can include ideas that have no current utility or application

# Trade Secrets

- ▶ **Ownership**
  - An employer generally owns trade secrets developed by employees and by independent contractors hired to develop or create such information
- ▶ **Exclusive Rights**
  - The owner of a trade secret can maintain it as long as secrecy is properly maintained

# IP Transfers

- ▶ The owner of IP rights can transfer all rights by written assignment or a portion of rights by a written license
- ▶ Rights transfer between an employee or independent contractor is dependent on:
  - The nature of the rights transferred
  - The existence of an enforceable agreement between the parties setting forth the terms of any such transfer

# Avoiding Infringement

- ▶ Existing patents, copyrights and trademarks can be searched
- ▶ Trade secrets cannot be searched, but violation generally requires intentional theft
- ▶ Copyrights are only violated if there is actual copying of the protected work (tough to prove).
- ▶ Patent infringement does not require intent or even knowledge of the patent
- ▶ The standard of infringement for trademarks is whether there is a “substantial likelihood of confusion” between trademarks among intended consumers

# BE WARNED!!!

- ▶ History is replete with examples of people who came up with amazing ideas...
- ▶ and never saw a single dime or profit from them.
  
- ▶ You may want/need to take a job that forces you to sign over any/all intellectual property rights to your work.
- ▶ In essence if you get fired/quit you won't even own the contents of your own mind.