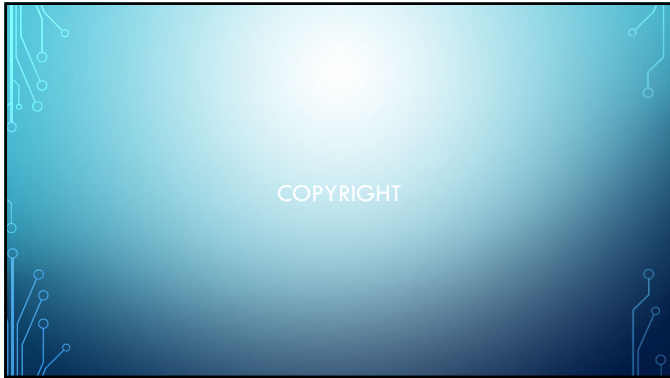
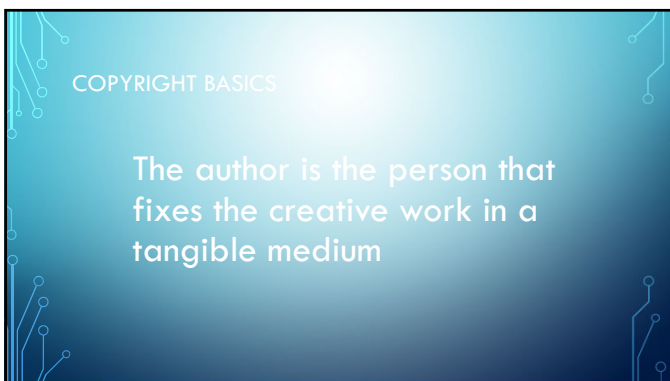


IP - RECAP

- Patents
 - 3 Types
 - Utility – Protects any invention, discovery of any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.
 - Novel
 - Useful
 - Not obvious to one skilled in the art
 - Design – Protects ornamental designs for a limited time
 - Plant – [you will never see this in gaming]
 - Do not exist until letters of patent issue by a government
 - In most jurisdictions, a patent is a legal monopoly to prevent others from making, selling, using, importing, leasing or offering the invention without the permission of the patent owner







COPYRIGHT BASICS

- Copyright protects expressions of ideas, but not the ideas themselves



The image shows four movie posters side-by-side. From left to right: 'Deep Impact' featuring Will Smith and Robin Williams; 'Armageddon' featuring Bruce Willis and Will Smith; 'No Strings Attached' featuring Justin Timberlake and Mila Kunis; and 'Mean Girls' featuring Lily Tomlin and Selena Gomez.

COPYRIGHT BASICS

- Protects creative elements of a work, but not primarily functional or utilitarian elements
- Protects web page content, graphics, animations, sounds, source code...
- Protects system documentation
- Protects gaming device source code
 - To the extent the source code is expressive...

COPYRIGHT BASICS

- Like patents, copyrights are exclusively the domain of federal law
 - State laws that grant rights in creative works have been held preempted by federal law and invalidated
 - e.g. A California law that protected live performances and speeches was deemed to be invalid as federal copyright laws exclusively protect creative works and federal copyright laws do not provide protection for live works not fixed in a tangible medium

COPYRIGHT BASICS

- For works created after 1978, works are granted copyright protection the instant they are fixed in a tangible medium
- Rights are not dependent of filing or registration
- Registration is required to file suit and protect certain damages
- For works created before 1978, see a copyright attorney

COPYRIGHT BASICS

- Owned by the author, the one who puts the expression into the tangible medium
- In a true employment situation, the employer is deemed the author if the work was done within the scope of employment
- Independent contractors retain copyright ownership in work created by them absent a written agreement to the contrary

COPYRIGHT BASICS - OWNERSHIP

- Works made for hire
- Often misunderstood
- In limited circumstances for limited types of works, a party commissioning a work may own the work upon its creation

COPYRIGHT BASICS - RIGHTS

- With respect to the work, copyright law provides an exclusive right to:
 - Reproduce, make copies
 - Create adaptations, enhancements, changes, new versions
 - Distribute publicly
 - Perform or display publicly

COPYRIGHT BASICS - NOTICE

- Notice removes the innocent infringement defense to infringement.
- Form:
 - © 2020 Greg Gemignani
 - Copyright 2020 Greg Gemignani
 - Copr. 2020 Greg Gemignani
- Must be positioned to give reasonable notice to be effective
- Lack of proper notice may result in a disallowance of damages in a successful infringement suit

COPYRIGHT BASICS - REGISTRATION

- Registration is done through the Copyright Office of the Library of Congress
- Registration forms are available via the Library of Congress Web Site (www.copyright.gov)
- Registration must be filed prior to bringing suit
- Registration must be effective prior to filing an infringement law suit in order to be eligible for statutory damages and attorney's fees, unless registration is made within three months of initial publication

COPYRIGHT BASICS - DAMAGES

- Lost profits
 - Proved and related to the infringement
- Disgorgement of profits
 - Proved and related
- Statutory damages of \$750 - \$150,000
 - At the court's discretion and depending on whether or not the infringement was willful.
- Attorney's Fees
 - In some circumstances
- Impoundment and/or destruction of infringing articles
- Injunctions

COPYRIGHT BASICS - DURATION

- For Works Authored By Natural Persons
 - Author's life plus 70 years
- Works For Hire
 - 95 years from first publication or 120 years from creation, whichever occurs first

COPYRIGHT BASICS - DURATION

- Make sure you own what you think you own
 - Have agreements with independent contractors
 - Define the scope of employee activities
 - Have agreements with employees to assign rights
- Protect yourself from infringement
 - Agreements with independent contractors
 - Employee education
- Copyright is the most prevalent type of intellectual property on the web.
- For common infringement (i.e., non-competitive infringement), send a demand letter first or risk good will with the court.

COPYRIGHT BASICS - GAMING CONTEXT

- GAMING DEVICES
 - Source code
 - Game graphics
 - Game sounds
 - Game organization

COPYRIGHT BASICS - GAMING CONTEXT


- Table games
 - Felt design
 - Organization
 - Graphics
 - Game promotional materials

COPYRIGHT QUESTIONS

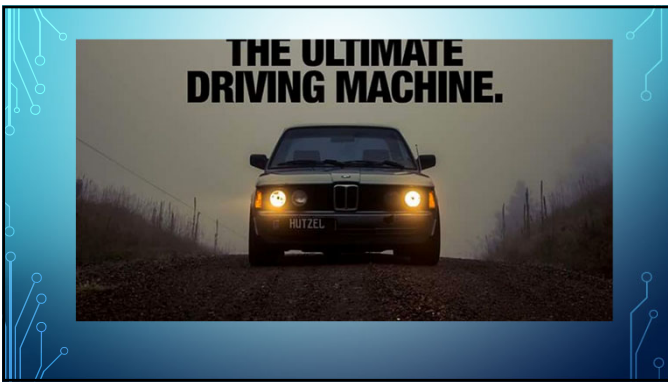
COPYRIGHT BASICS - IDENTIFICATION

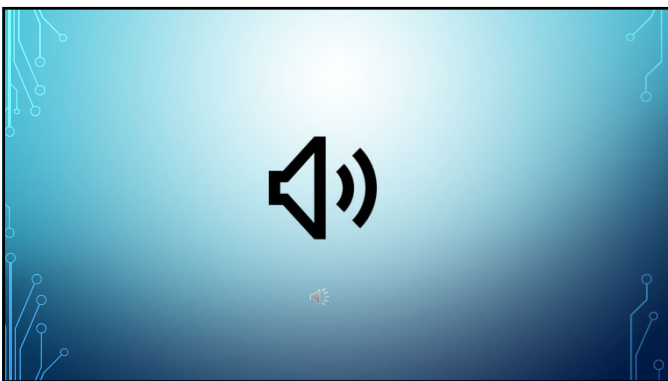
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TRADE MARKS












TRADEMARK BASICS

- Any word, name, symbol, or device or any combination thereof adopted and used by a manufacturer or merchant to identify and distinguish his goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown. 15 U.S.C. § 1127.

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Words/Phrases/Terms	XEROX
Designs	
Colors	 Pink for Fiberglass
Sounds	
Product Configuration	

TRADEMARK BASICS - STRENGTH

STRONG **Weak Unregisterable**

Exxon (Ivory Soap), Rolex, Kodak, SWATCH (Swiss Watches), Camel (Cigarettes), Apple (iPhones/iPads), American Airlines (Airlines), McDonald's (Fast Food), Kentucky Fried Chicken (Food), Bar & Grille (Restaurants)

Coined Words & Symbols, Arbitrary Uses of Real Words or Symbols, Suggestive Words & Symbols, Descriptive Words & Symbols, Generic Words & Symbols

- Protection is available only for distinctive marks (distinguishes your goods/services from competitors)
 - Generic terms are not distinctive
 - Casino for Gaming, Aspirin for Acetylsalicylic Acid, Car for Automobile
 - Arbitrary use and coined words are inherently distinctive
 - Rolex, Xerox, Exxon, Oreo
 - In-between being generic or arbitrary, distinctive use increases as the descriptive nature of the mark decreases

TRADEMARK - OBTAINING RIGHTS

- USE is the key for obtaining trademark rights.
- Common law rights begin when the mark is used in commerce in a particular geographic area
- State Registration
- In most states, use in the state and state registration provides a presumption that the registrant is entitled to exclusive use of the mark throughout the state
- Federal Registration
- Can secure an initial date based on a bona-fide intention to use a mark
- Federally registered mark rights only vest after interstate commercial use and the Patent and Trademark Office's issuance of a registration

TRADEMARK - OBTAINING RIGHTS

- Type Of Use.
 - Use of the mark must be sufficiently public to identify or distinguish the goods or services in the public's mind as those goods or services of the owner of the mark
 - A trade name or corporate name used merely to identify a business entity is not protectable as a trademark
 - The use must also be a bona fide use in the ordinary course of trade. Token uses merely to establish trademark rights are not sufficient and, given the availability of the intent-to-use application, should not be necessary
- Common Law.
 - Use must be within the particular geographic territory within which protection is claimed
- State Registration
 - Usually requires actual use in commerce within the state
- Federal Registration.
 - The use must be in interstate commerce

TRADEMARK - OBTAINING RIGHTS

- Initial Search
 - Check the federal database for infringement
- Full Search
 - Check state, federal, common law and internic databases
- Prepare and File an Application
- Interact with the United States Patent & Trademark Office to prosecute registration

TRADEMARK - FEDERAL REGISTRATION

- Presumption of an exclusive right to national use
- Availability of enhanced damages
- Presumed nationwide notice

TRADEMARK - REGISTRATIONS

- Federal
 - File Affidavits of Continued Use
 - Between the 5th and 6th years and every 10 years thereafter
 - File Renewals
 - Every 10 Years
- State
 - File Periodic Renewals
- All
 - Police your mark to preserve the source indicating quality of the mark.

TRADEMARK - MARKING

- Federally REGISTERED marks
 - ®, "Registered in the U.S. Patent and Trademark Office" or "Reg. U.S. Pat. & Tm. Off."
 - Without notice monetary damages may be unavailable
- State Registered or Common Law Marks
 - TM or SM above and to the right of the mark.

TRADEMARK - DURATION

- Perpetual
 - So long as source identifying quality is maintained
 - For registered marks, maintenance must be performed in order to retain registration benefits..

TRADEMARK - LOSS OF RIGHTS

XEROX

Once a trademark, not always a trademark.

They were once proved trademarks, now they're just names. They failed to take precautions their words have helped them have a long and prosperous life. We need your help to stop use of these. Whenever you see one name please use it as a proper adjective to describe one of our products and services or a Xerox copier or Xerox Instruments. And don't do it.

When Xerox, We document the world.

XEROX

Not even Xerox can Xerox.

In fact, nobody can Xerox. Or have something Xeroxed. You can copy or have something copied, but you just can't Xerox.

That's because the Xerox trademark is not a verb. It's a proper adjective that should always be followed by a word or phrase describing one of our products. As in Xerox copiers, Xerox electronic typewriters, Xerox laser printers, etc.

We're proud of our trademark. It's valuable to us. And to you. It's how you can be sure that when you ask for a Xerox product, you'll get a Xerox product. Not something else.

So, if you would, make a copy of this advertisement and place it near your Xerox copier. Then everyone who copies will know that no one can Xerox.

Not even Xerox.

XEROX® is a trademark of XEROX CORPORATION

TRADEMARK - INFRINGEMENT

- Likely to cause confusion in the minds of consumers as to the source, affiliation or endorsement of goods and services
- Common Factors
 - the strength of the plaintiff's mark and whether it is protectable;
 - the degree of similarity between the marks;
 - the similarity of the products and services offered by the parties;
 - evidence of actual confusion;
 - the similarity of the marketing channels of the parties;
 - the sophistication of the buyers in the relevant market and the degree of care likely to be exercised by the buyer;
 - the defendant's intent in adopting the mark; and
 - the likelihood of expansion of the product line or services

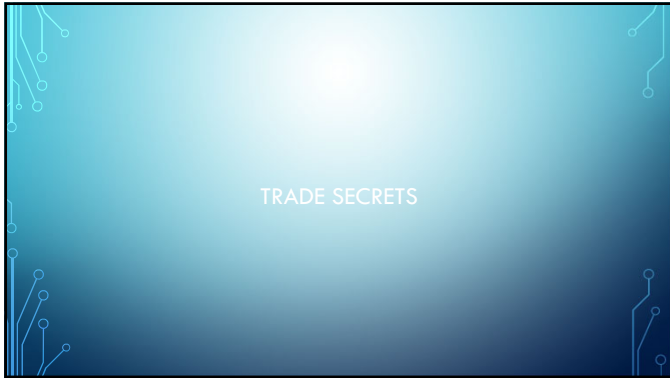
TRADEMARK - DAMAGES

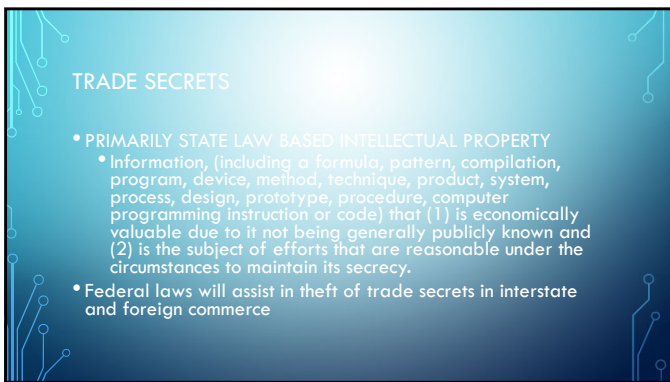
- Monetary Relief
 - Lost profits
 - Infringer's profits
 - Statutory damages for domain name related infringement of up to \$150,000
 - Attorney's fees
- Injunctions
- Destruction of Infringing Articles

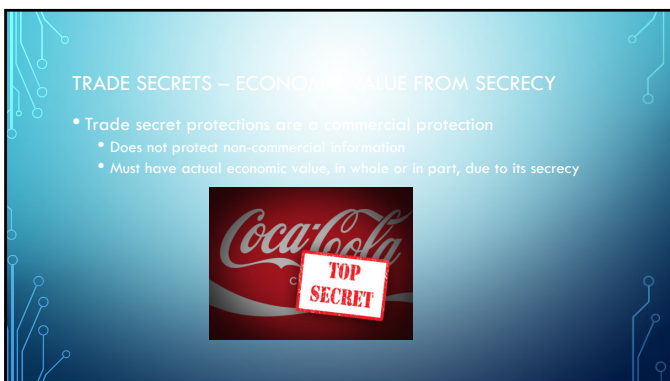
TRADEMARKS - TIPS

- If you're just starting, select a strong protectable mark.
 - Tell consumers what your product or service is using a tag line.
- Don't use the mark of another on your site, in your domain name or in your URL path.
- Preserve the source indicating quality of your marks.
- If a domain name is available grab it, then do the search. For about \$20 it is cheaper to get it now than use it than negotiate the acquisition later.

TRADEMARK QUESTIONS








TRADE SECRETS – ECONOMIC VALUE FROM SECRECY

- MUST BE SUBJECT TO REASONABLE EFFORTS TO KEEP IT SECRET



TRADE SECRETS – ECONOMIC VALUE FROM SECRECY

- MUST BE SUBJECT TO REASONABLE EFFORTS TO KEEP IT SECRET
 - Use reasonable efforts to prevent disclosure
 - Use non-disclosure agreements to protect the information prior to making a disclosure
 - Educate employees
 - Have written employment agreements
 - Perform employee exit interviews

TRADE SECRETS

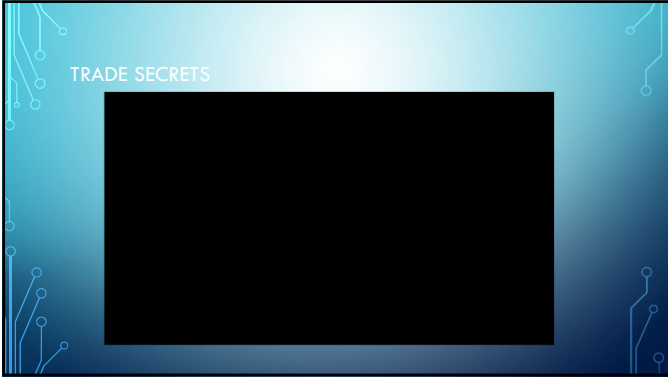
- Through Employees
 - Perform hiring interviews and identify any potential employees with prior agreements
 - Do not hire employees to perform jobs that will inevitably require them to rely on the trade secrets of another
 - Do not engage in questionable methods to obtain information

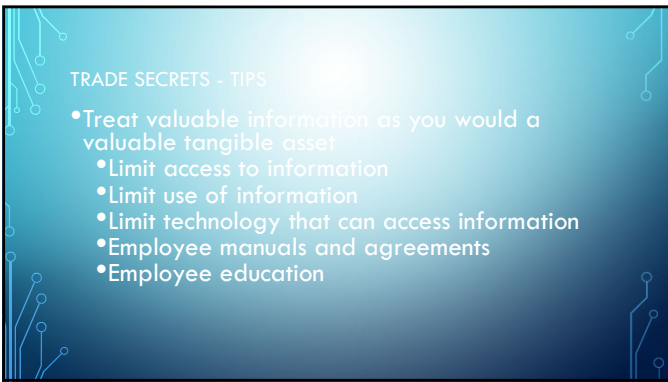
TRADE SECRETS - DAMAGES

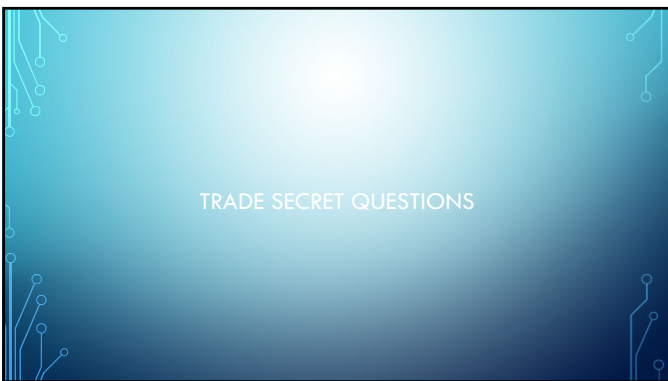
- (Depends on the law of the state)
- Monetary damages
- Lost profits, unjust enrichment
 - In Nevada, it may be double damages in some cases
- Reasonable royalty
- Attorney's fees
- Federal – prison not to exceed 10 years for trade secret theft, prison not to exceed 15 years for economic espionage, plus monetary damages and fines in the court's discretion

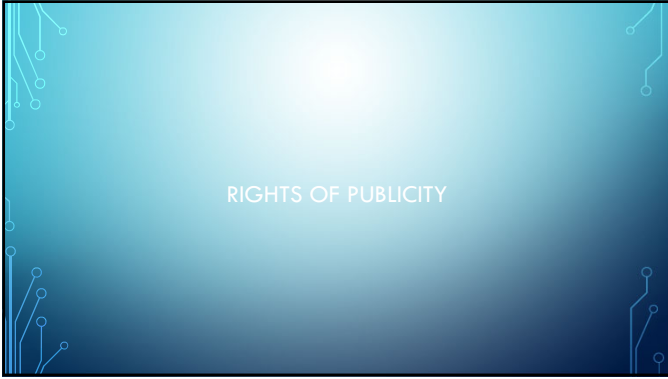
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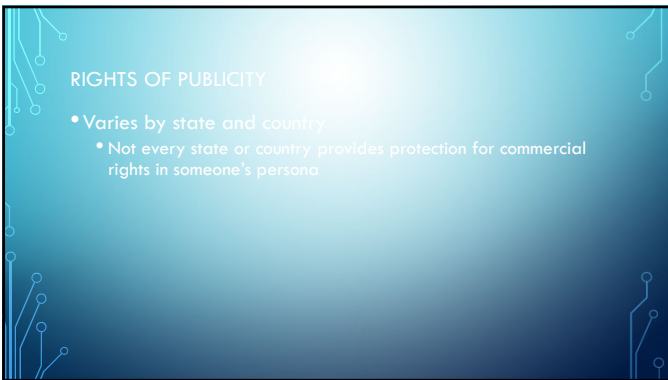
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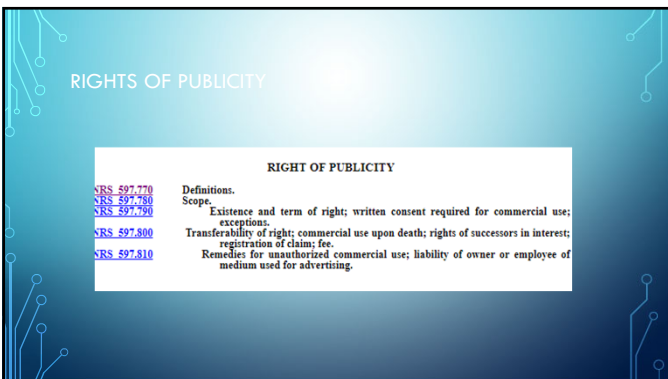












RIGHTS OF PUBLICITY

- NRS 597.790 Existence and term of right; written consent required for commercial use; exceptions.
 - 1. There is a right of publicity in the name, voice, signature, photograph or likeness of every person. The right endures for a term consisting of the life of the person and 50 years after his or her death, regardless of whether the person commercially exploits the right during his or her lifetime.

RIGHTS OF PUBLICITY

- NRS 597.810 Remedies for unauthorized commercial use; liability of owner or employee of medium used for advertising.
- 1. Any commercial use of the name, voice, signature, photograph or likeness of another by a person, firm or corporation without first having obtained written consent for the use is subject to:
 - (a) Injunctive relief to prevent or restrain the unauthorized use; and
 - (b) An action at law for any injuries sustained by reason of the unauthorized use. In such a suit, the plaintiff may recover:
 - (1) Actual damages, but not less than \$750; and
 - (2) Exemplary or punitive damages, if the trier of fact finds that the defendant knowingly made use of the name, voice, signature, photograph or likeness of another person without the consent required by NRS 597.790.





