

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

COPYRIGHT BASICS

Copyrights are a bundle of exclusive rights granted to the author(s) of a creative work fixed in a tangible medium

COPYRIGHT BASICS

The author is the person that fixes the creative work in a tangible medium

[illegible]

- 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...

[illegible]

- 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 - MARKING

- 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 - DURATION

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TRADE MARKS



Coca-Cola










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



- 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

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 your 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 an not use it than negotiate the acquisition later.

TRADEMARK QUESTIONS

TRADE SECRETS

TRADE SECRETS

- PRIMARILY STATE LAW BASED INTELLECTUAL PROPERTY
 - Information, (including a formula, pattern, compilation, program, device, method, technique, product, system, process, design, prototype, procedure, computer programming instruction or code) that (1) is economically valuable due to it not being generally publicly known and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
- Federal laws will assist in theft of trade secrets in interstate and foreign commerce

TRADE SECRETS – ECONOMIC VALUE FROM SECRECY

- Trade secret protections are a commercial protection
 - Does not protect non-commercial information
 - Must have actual economic value, in whole or in part, due to its secrecy



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

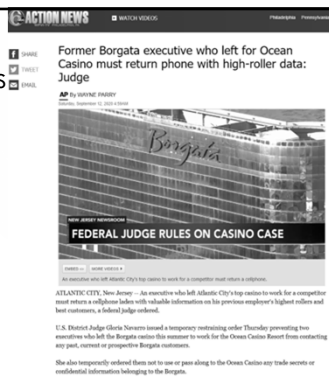
TRADE SECRETS

- 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

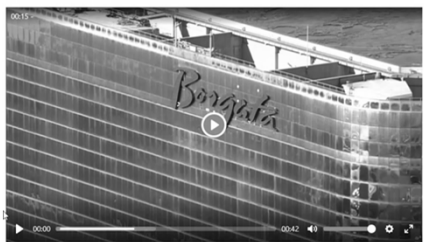
TRADE SECRETS - DAMAGES

- (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

TRADE SECRETS



TRADE SECRETS



TRADE SECRETS



TRADE SECRETS - TIPS

- Treat valuable information as you would a valuable tangible asset
 - Limit access to information
 - Limit use of information
 - Limit technology that can access information
 - Employee manuals and agreements
 - Employee education

TRADE SECRET QUESTIONS

RIGHTS OF PUBLICITY

RIGHTS OF PUBLICITY

- Varies by state and country
 - Not every state or country provides protection for commercial rights in someone's persona

RIGHTS OF PUBLICITY

SRS 597.770
 SRS 597.780
 SRS 597.790
 SRS 597.800
 SRS 597.810

RIGHT OF PUBLICITY
 Definitions.
 Scope.
 Existence and term of right; written content required for commercial use; exceptions.
 Transferability of right; commercial use upon death; rights of successors in interest; registration of claim; fee.
 Remedies for unauthorized commercial use; liability of owner or employee of medium used for advertising.

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.

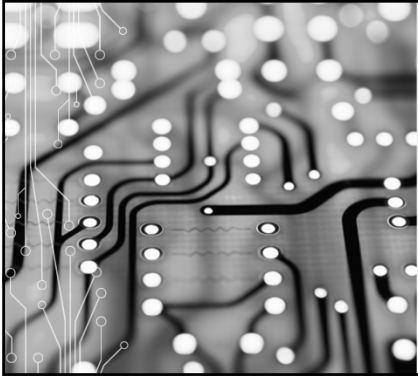
RIGHTS OF PUBLICITY

- 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.





RIGHTS OF PUBLICITY
QUESTIONS



NEXT CLASS

- LIVE
