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- - 3 Types

  - 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.

     Nevel

     Useful

     Not obvious to one skilled in the art

     Design Protects aromaental designs for a limited time

     Plant Iyou 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	
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	

#### **COPYRIGHT BASICS**

 Copyright protects expressions of ideas, but not the ideas themselves





#### **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

CO	PY	R	G	HT	RΔ	SI	CS

- 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
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- •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

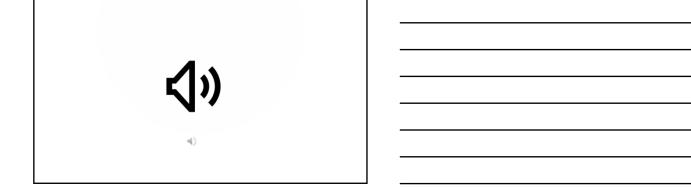

COPYRIGHT BASICS - DAMAGES	
Lost profits    Proved and related to the infringement	-
Disgorgement of profits     Proved and related	
Statutory damages of \$750 - \$150,000 At the court's discretion and depending on whether or not the infringement was willful.	
<ul><li>Attorney's Fees</li></ul>	
• In some circumstances • Impoundment and/or destruction of infringing	
articles • Injunctions	-
<u>'</u>	
	$\neg$
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	-
	$\neg$
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	
<ul> <li>Agreements with independent contractors</li> <li>Employee education</li> </ul>	
<ul> <li>Copyright is the most prevalent type of intellectual property on the web.</li> <li>For common infringement (i.e., non-competitive infringement), send a demand</li> </ul>	
letter first or rick good will with the court	

COPYRIGHT BASICS - GAMING CONTEXT	
•GAMING DEVICES	
• Source code	
•Game graphics	
•Game sounds	
•Game organization	
<b>3</b>	
COPYRIGHT BASICS - GAMING CONTEXT	
•Table games	
•Felt design	
<ul><li>Organization</li></ul>	
• Graphics	
•Game promotional materials	
COPYRIGHT QUESTIONS	

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	-
<ul> <li>Copyright is the most prevalent type of intellectual property on the web.</li> <li>For common infringement (i.e., non-competitive infringement), send a demand</li> </ul>	-
letter first or risk good will with the court.	
	-
	-
	-
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.

#### TRADEMARK BASICS

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Words/Phrases/Terms	XEROX
Designs	
Colors	Pink for Fiberglass
Sounds	<b>Q</b> E
Product Configuration	

<b>TRADEMARK</b>	BASICS -	<ul> <li>STRENGTH</li> </ul>
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- from competitors)

   Generic terms are not distinctive

   Casino for Gamina A
  - - 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

- $\bullet\,$  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
- $\bullet$  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
- $\bullet$  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.
  - $\bullet \;\;$  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.

TRADEMARK - OBTAINING RIGHTS	
• Initial Search	
<ul> <li>Check the federal database for infrigement</li> <li>Full Search</li> </ul>	
<ul> <li>Check state, federal, common law and internic</li> </ul>	
databases  • Prepare and File an Application	
<ul> <li>Interact with the United States Patent &amp; Trademark Office to prosecute registration</li> </ul>	
To prosecute registration	<u> </u>
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TRADEMARK - FEDERAL REGISTRATION	
<ul> <li>Presumption of an exclusive right to</li> </ul>	
national use	
<ul><li>Availability of enhanced damages</li><li>Presumed nationwide notice</li></ul>	
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TRADEMARK - REGISTRATIONS	
• Federal • File Affidavits of Continued Use	
<ul> <li>Between the 5th and 6th years and every 10 years thereafter</li> <li>File Renewals</li> </ul>	
Every 10 Years State	
• File Periodic Renewals	
<ul> <li>All</li> <li>Police your mark to preserve the source indicating quality of the mark.</li> </ul>	

TRADEMARK - MARKING	
•Federally REGISTERED marks	-
<ul> <li>®, "Registered in the U.S. Patent and Trademark Office" or "Reg. U.S. Pat. &amp; Tm. Off."</li> </ul>	
<ul> <li>Without notice monetary damages may be</li> </ul>	<del></del>
unavailable  •State Registered or Common Law Marks	-
TM or SM above and to the right of the mark.	
TRADELIA DI CONTROLI	
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	

Once a trademark, not always a trademark.	
They were once presed trademarks, now they're just names. They failed to take precentions that would have helped them have a long and prosperous life.  We need your help to stay out of there. Wherever you use our name, please use it as a proper adjective in conjunction with our products and services: e.g., Xerox copiers or Yexton financial services. And never as a	worbs "too Nerson" is place of "no coppy," or as a messa. "Nerson" in place of "copies." With your being and a presumation of two on our part, which you have been a presumation of two on our part, strademarks from the continued always the Acres Fram Nerson. We document the world.
ALATOR TRAMPOLINE	PARAMETER STATE OF THE STATE OF
RIP OCTANE	AHOLIN (HOLLIN)
KEROSENE	YO W MIMEOGRAPH

## 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 copy or have something copied, but you just can be considered to the control of the control

#### TRADEMARK - INFRINGEMENT

- Likely to cause confusion in the minds of consumers as to the source, affiliation or endorsement of goods and services
- Common Factors
  - $^{\bullet}$  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;
  - $^{ullet}$  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	
intringement of up to \$150,000	
• Attorney's fees	
• Injunctions	<del>-</del>
Destruction of Infringing Articles	
TRADEMARKS - TIPS	
TRADEMARKS - III S	
<ul> <li>If your just starting, select a strong protectable mark.</li> </ul>	
<ul> <li>Tell consumers what your product or service is using a tag line.</li> </ul>	
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.	
cheaper to get it an not use it main negotiare line acquisition rater.	
TRADEMARK QUESTIONS	
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TRADE SECRETS	
TRADE GEGRETO	
TD A DE CECOETC	-
TRADE SECRETS	
<ul> <li>PRIMARILY STATE LAW BASED INTELLECTUAL PROPERTY</li> </ul>	
<ul> <li>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</li> </ul>	
program, device, method, technique, product, system,	
programming instruction or code) that (1) is economically	
valuable due to it not being generally publicly known and	
circumstances to maintain its secrecy.	
<ul> <li>Federal laws will assist in theft of trade secrets in interstate and foreign commerce</li> </ul>	
	-
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TRADE SECRETS – ECONOMIC VALUE FROM SECRECY	
• Trade secret protections are a commercial protection	
<ul> <li>Does not protect non-commercial information</li> <li>Must have actual economic value, in whole or in part, due to its secrecy</li> </ul>	
most have action economic value, in whole of in part, and to its secrecy	
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TRADE SECRETS – ECONOMIC VALUE FROM SECRECY	
MUST BE SUBJECT TO REASONABLE EFFORTS TO KEEP IT SECRET	
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TRADE SECRETS – ECONOMIC VALUE FROM SECRECY	
• MUST BE SUBJECT TO REASONABLE EFFORTS TO KEEP	
IT SECRET  • Use reasonable efforts to prevent disclosure	
<ul> <li>Use non-disclosure agreements to protect the information prior to making a disclosure</li> </ul>	
<ul> <li>Educate employees</li> <li>Have written employment agreements</li> </ul>	
• Perform employee exit interviews	
	1
TRADE SECRETS	
<ul> <li>Through Employees</li> <li>Perform hiring interviews and identify any potential employees with prior agreements</li> </ul>	
potential employees with prior agreéments  Do not hire employees to perform jobs that will	
<ul> <li>Do not hire employees to perform jobs that will inevitably require them to rely on the trade secrets of another</li> </ul>	
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



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TRADE SECRETS	
TRADE SECRETS - TIPS  Treat valuable information as you would a valuable tangible asset  Limit access to information  Limit use of 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	
<ul> <li>Varies by state and country</li> <li>Not every state or country provides protection for commercial rights in someone's persona</li> </ul>	
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RIGHTS OF PUBLICITY	
RIGHT OF PUBLICITY	
SRS 597.770 Definitions. SRS 597.780 Scope. SRS 597.780 Existence and term of right; written consent required for commercial use; exceptions. SRS 507.800 Existence and term of right; written consent required for commercial use; exceptions.	
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RIGHTS OF PUBLICI	ΙTΥ	.ICI	JBL	Pι	OF	IGHTS	RΙ
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- •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.
- 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

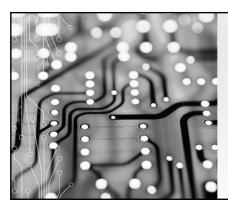
  (2) Exemplary or punitive damages, if the trier of fact finds that the defendant knowingly made use of the name, voice, signature, photograph or likeness of another person without the consent required by NRS \$97.790.



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By MEG JAMES			
SEP. 25, 2001   12 AM TAKES STAFF WINTON	SUBSCRIBERS ARE READING		
Arnold Schwarzenegger is suing one of the nation's leading makers of slot	Outronex "Brutsi" smog from fires to worsen L.A. air.		
machines for \$20 million for allegedly making and marketing gambling products that feature his voice and likeness as the "Terminator."	prompting some to weigh relocating	ana .	
	CALFORNA	6 Single	
The lawsuit against International Game Technology contends the Reno	Smoke keeps choking Southern California as Bobcat fire grows	9 44 .0	
company never sought the permission of the action actor before making its			
"Terminator" esque slot machines, video gaming machines or advertising the	SORWIX	G. S. Sandarine S. C. Company	
products in catalogs and at a convention earlier this year.	The coronavirus may have reached Los Angeles even before China announced its outbreak	Company of the compan	
A spokesman for the company, however, said International Game Technology		The state of state of the state	
has been licensed by Canal-Plus in France and Creative Licensing Corp. in Los	CLIMATE & DIVIDONALISET	THE RESERVE OF THE RE	
Angeles to market a "Terminator" slot machine.	Your questions about air quality answered	0-37 000	
"Since we are very protective of our own property rights, we are extremely	wase		
cautious of the property rights of others," said IGT spokesman Rick Scrensen.	Let the queens reign: Patti LaBelle and Gladys Knight are ready for Verzuz battle		
The 20-year-old company, with more than \$1 billion in annual sales, makes		CO. SP. AND REAL PROPERTY.	
traditional slot machines, video poker and video slot machines.		THEK	
According to the lawouit filed in Los Angeles Superior Court on Sept. 7.			
Schwarzenegger doesn't associate himself with products he doesn't support or		CONT.	
believe in. He is "particularly circumspect to avoid using his name, likeness or		THE REAL PROPERTY AND ADDRESS OF THE PERSON NAMED IN COLUMN TWO IN COLUMN TO THE PERSON NAMED IN COLUMN TWO IN COL	
image for certain industries such as gambling."		A SALL MANAGEMENT OF THE PARTY	
The actor does not want his image to become overexposed, the suit said. And		The second second	
although Schwarzenegger has done commercials endorsing the national		Chapter   Mary   Chapter	
railway system in Austria, a language school in Brazil and DirectTV in Japan,			
his reconstration said he has refused bandening of offers to lead his name or			

# RIGHTS OF PUBLICITY QUESTIONS



NEXT CLASS

• LIVE