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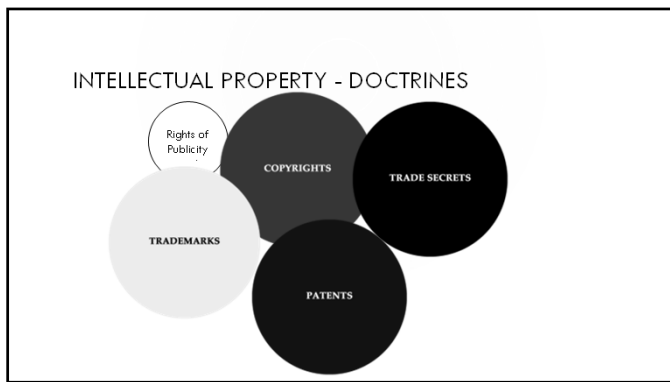
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IP - RECAP

- 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

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## RECAP - COPYRIGHT

### • Copyrights

- Protects creative expressions fixed in a tangible medium
- Does not protect facts, ideas, utility or function (just expressions)
- Exist upon fixation
- Rights vest with authors (unless in a true employment situation)
- Rights include the right to copy, reproduce, make derivative works (modify), publish, publicly display, and publicly perform

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## RECAP - COPYRIGHT

### • Copyrights

- Rights can be assigned or licensed
- Registration required to file suit
- Prompt registration required to preserve certain damages
- Federal/National ONLY – no state copyrights
- Copyrights are limited in time, the time is dependent on how the work was created
- When copyrights expire, works fall into the public domain

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## TRADE MARKS

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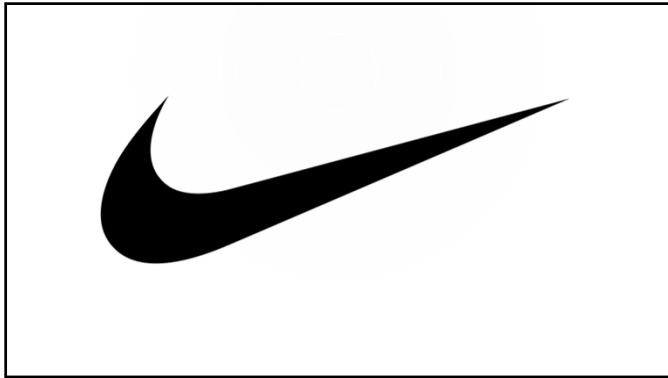
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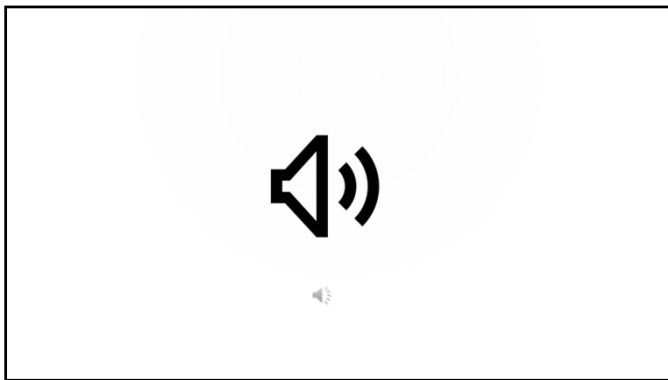
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### TRADEMARK BASICS - STRENGTH

Exxon	Ivory (soap)	SWATCH (Swiss Watches)	American Airlines (Airlines)	Bar & Grille (Restaurants)
Rolex	Camel (cigarettes)	Paschoy (Shagunies)	McDonald's (Restaurants)	Apple (Apple Fruit)
Kodak	Apple (Computers/phones)		Kentucky Fried Chicken (Fried)	
<b>STRONG</b>		Secondary Meaning	<b>Weak</b> Unregistrable	
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

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## 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

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## 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

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## 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

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## TRADEMARK - FEDERAL REGISTRATION

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

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## 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.

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## 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.

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[illegible]

TRADEMARK - LOSS OF RIGHTS

[illegible][illegible][illegible]

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.

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## 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

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## 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

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### 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.

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### TRADEMARKS - TIPS

- Preliminary Searches:
  - <https://tmsearch.uspto.gov/search/search-information>

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### TRADE SECRETS

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## 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

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## 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




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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
  - Use non-disclosure agreements to protect the information prior to making a disclosure
  - Educate employees
  - Have written employment agreements
  - Perform employee exit interviews

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#### 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

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#### 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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TRADE SECRETS



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TRADE SECRETS



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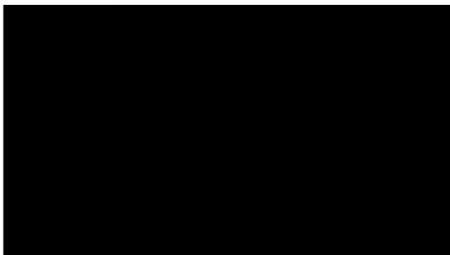
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TRADE SECRETS



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## 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

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## TRADE SECRET QUESTIONS

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## RIGHTS OF PUBLICITY

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## 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

<u>NRS 597.770</u>	Definitions.
<u>NRS 597.780</u>	Scope.
<u>NRS 597.790</u>	Existence and term of right; written consent required for commercial use; exceptions.
<u>NRS 597.800</u>	Transferability of right; commercial use upon death; rights of successors in interest; registration of claim; fee.
<u>NRS 597.810</u>	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.

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**Los Angeles Times**

**Schwarzenegger Sues Over Likeness on Slot Machines**

By Neil Rimes  
Sept. 25, 2003, 1:05 PM  
Times Staff Writer

Arnold Schwarzenegger is suing one of the nation's leading makers of slot machines for \$20 million for allegedly making and marketing gambling products that feature his voice and likeness on the "Terminator."

The lawsuit against International Game Technology contends the Reno company never sought the permission of the action actor before making the "Terminator" esque slot machines, video gaming machines or advertising the products in catalogs and at a convention earlier this year.

A spokesman for the company, however, said International Game Technology has been licensed by Credit Plus in France and Creative Licensing Corp. in Los Angeles to market a "Terminator" slot machine.

"Since we are very protective of our own property rights, we are extremely cautious of the property rights of others," said IGT spokesman Rick Hermann. The 20-year-old company, with more than \$1 billion in annual sales, makes traditional slot machines, video poker and video slot machines.

According to the lawsuit filed in Los Angeles Superior Court on Sept. 7, Schwarzenegger doesn't associate himself with products he doesn't support or believe in. He is "particularly circumspect to avoid using his name, likeness or image for certain industries such as gambling."

The actor does not want his image to become overexposed, the suit said. And although Schwarzenegger has done commercials endorsing the national railway system in Austria, a language school in Brazil and RiverTV in Japan, Schwarzenegger said he has not endorsed any other products or services.

**BACKGROUND AND READING**

**GOVERNMENT**  
Should suing from here to across L.A. are attempting suits to weigh inducting.

**COURTROOM**  
Suits have shaking Southern California on federal tax laws.

**SOURCE**  
The controversy may have reached Los Angeles area before IGT announced its refusal.

**CREDIT & CREDITMENT**  
New questions about oil quality answered.

**NOTE**  
Let the sources major: Page 1, public and Globe Knight are ready for "World Wide."

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### RIGHTS OF PUBLICITY QUESTIONS

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### PUBLIC DOMAIN TOOLS

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### PATENTS

- USPTO.GOV
  - <https://www.uspto.gov/patents/search/patent-public-search>
- Google Patents
  - <https://patents.google.com>
- Country Specific
  - <https://www.wipo.int/ipdl/en/resources/links.html>

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## COPYRIGHTS

## •Copyright Office

- <https://www.copyright.gov/public-records/>

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## TRADEMARKS

## •United States Patent and Trademark Office

- <https://tmsearch.uspto.gov/search/search-information>

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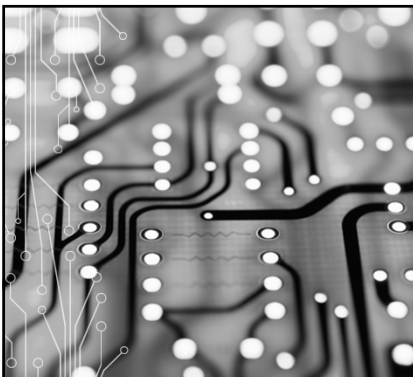
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## NEXT CLASS

- IP APPLIED

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