DISCLAIMER

• This presentation contains general legal concepts and is not meant as a substitute for legal advice

• All situations are unique, and you should seek advice from an experienced attorney if you have questions

• GOAL: Issue spotting
Categories of Intellectual Property

- Patents
- Trade Secrets
- Privacy and Publicity Rights
- Copyrights
- Trademarks
Patents

- Invention, process, compositions of matter
  - New
  - Useful
  - Non-obvious
  - Design, utility, plant
- Need a specialized attorney technical background
- 14-20 years
- USPTO
Trade Secrets

- New federal law/state laws
  - Defend Trade Secrets Act
- Secret information/of value
  - Pricing and client lists
- Must protect as secret
- Not readily “reverse engineered”
- NDAs
  - Whistleblower provisions limit damages
  - Provide opportunities for noncompetes
Rights of Privacy and Publicity

• PRIVACY
  • The right to be let alone
  • Intrusion upon solitude or seclusion
  • Public disclosure of private facts vs. newsworthy
  • In other states: false light

• PUBLICITY
  • Appropriation of one's name or likeness
    • (Colorado Privacy)
TRADEMARKS

- Identifier of source
- To protect the consumer

- Logo, name, tagline

- Not descriptive or suggestive
- Fanciful and arbitrary are best
- Can have copyrightable elements
Copyrights

- Expression
  - ONLY Federal protection
  - Original Works of Authorship
  - Fixed in a tangible means of expression
Copyrightable

- Literary, musical and dramatic works
- Pantomimes and choreographic works
- Pictorial, graphic and sculptural works
- Sound recordings
- Motion pictures and other AV works
- Computer programs
- Compilations of works and derivative works
- Architectural works
In Tangible Form of Expression

- Photograph
- Audio recording
- On a napkin

- Copyright arises immediately
- Use © AND name
Original Expression and Authorship

• Excludes Scènes à faire from Infringement
Original Expression and Authorship

- Must be by a human
- "Congress and the President can extend the protection of law to animals as well as humans, there is no indication that they did so in the Copyright Act."
What rights in copyright?

- The right to make copies
- Derivative works (rearranging)
- Distribute
- Publicly Perform
- Publicly Display
- Audio dissemination of sound

- RIGHT TO STOP SUBSTANTIALLY SIMILAR WORKS
Think about your copyrights

- Copy on websites
- Training materials
- Photos you’ve taken
- Transcripts for talks
- Power point slides for talks
- Videos
- Books
- Programs
- Design of your logo
Who owns the copyright?

• Author=creator
• Employer for any employee created works
  • Control based test
• Work Made for Hire
  • Must have a written signed agreement
  • Must reference Work for Hire
  • Only certain categories:
  • Specially commissioned for
    • contribution to a collective work
    • part of a motion picture or other audiovisual work
    • Translation, supplementary work, a compilation, instructional text, test, answer material for a test, or atlas

• Who owns your logo???
• Are there rights of publicity?
Assignment and Licensing

• Assignment
  • Transfer off all rights
  • Written agreement

• Licensing
  • Transfer of defined parts
  • Can terminate
Infringement

• Substantially similar
• Access
Infringement

• Friedman v. Guetta
Infringement

• Davidson v. US
  $3.5M
Infringement

• My Sweet Lord v. He's so fine
NFTs

- Certificate of ownership
- Electronic file
- No copyright ownership

- Do they own the underlying ©?
- Skateboard guy vs. Stevie Nicks
Fair Use

• Defense to infringement
• Parody
• Number of criteria
  • Noncommercial use not dispositive
• COMMENTARY and transformative

• VERY CASE SPECIFIC
• SEEK LEGAL GUIDANCE
Fair Use

• Cariou v. Prince
• Can be transformative if they present a new aesthetic
• Settled
Fair Use

• Blanch v. Koons
• Banal vs. creative
• Different markets
Fair Use

- Recent case:
  - Oracle v. Google
  - 11,000+ lines of code
  - FAIR USE
    - Ensure that the copyright holder’s monopoly does not harm the public interest
    - Copyright does not extend to ideas
    - Use was transformative & only copied what was necessary
Registration

• Must register before publication (made available to the public) OR infringement

• Gets you benefits
  • Notice
  • Access to courts
  • Statutory damages
  • ATTORNEYS FEES

• Different than DMCA rights
Avoiding infringement

- No free access on Internet
- Attribution is not a license
- Creative Commons
- Don't assume public domain
- Orphan works
THANK YOU & QUESTIONS

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