

# Copyright Law Basics

For Creatives

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# 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

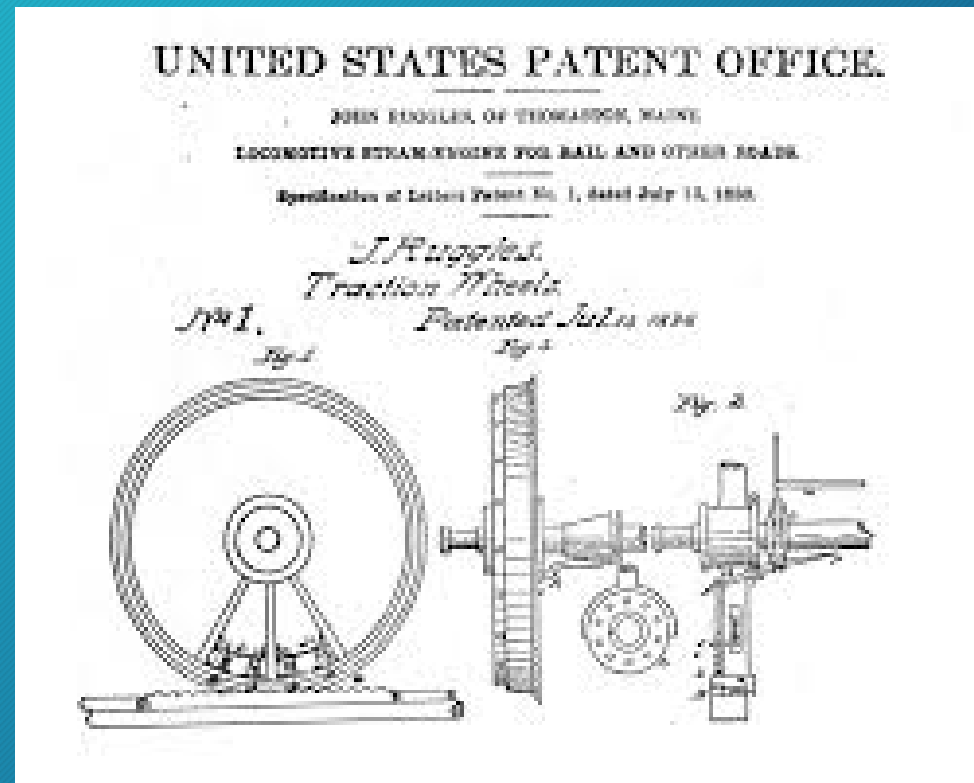
- Invention, process, compositions of matter

- 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



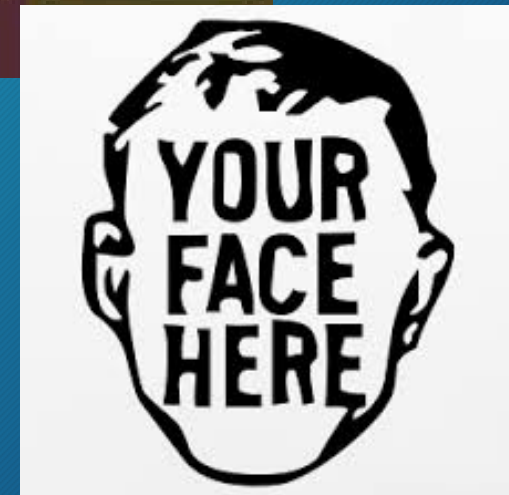
# Rights of Privacy and Publicity

- **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)





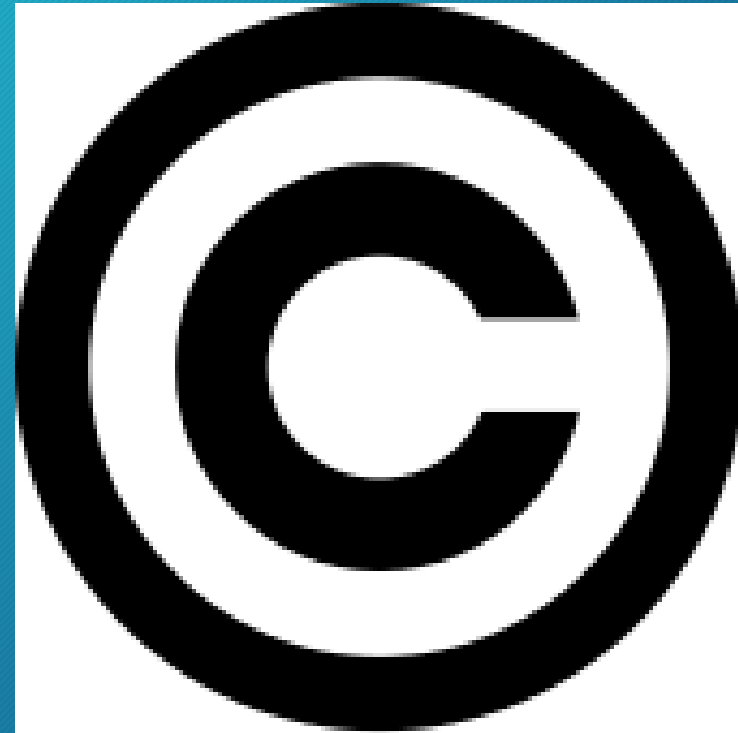
# TRADEMARKS

- Identifier of source
- To protect the consumer
- Logo, name, tagline
- Not descriptive or suggestive
- Fanciful and arbitrary are best
- Can have copyrightable elements



# Copyrights

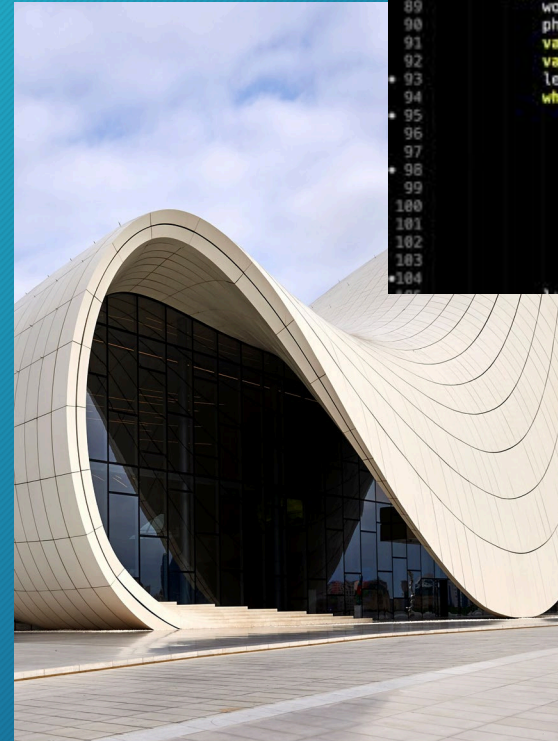
- Expression
  - ONLY Federal protection
  - Original Works of Authorship
  - Fixed in a tangible means of expression





# Copyrightable

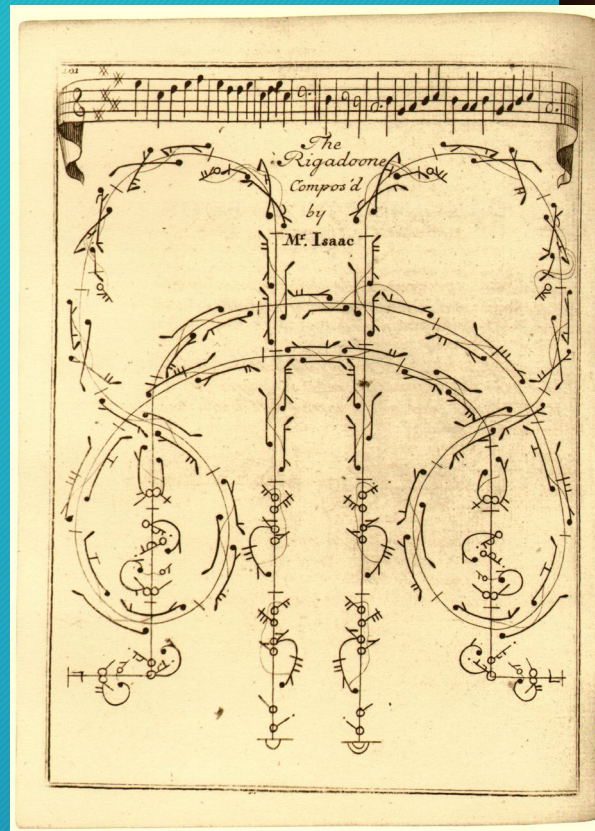
- Literary, musical and dramatic works
- Pantomimes and choreographic works
- Pictorial, graphic and sculptural works
- Sound recordings
- Motion pictures and other AV works
- Computer programs
- Compilations of works and derivative works
- Architectural works



```
87
88
89 speakArticle = function(article){
90     wordArray = article.match(/\S+\s+/g);
91     phraseArray = [''];
92     var y = 0;
93     var i = 1;
94     length = wordArray.length //set once since we are
95     while (i <= length) {
96         while (i % 40 != 0) {
97             if (wordArray.length > 0){
98                 phraseArray[y] += wordArray.shift();
99                 i++;
100             } else break;
101         }
102         i++;
103         y++;
104         phraseArray[y] = '';
105     }
106 }
```

# 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

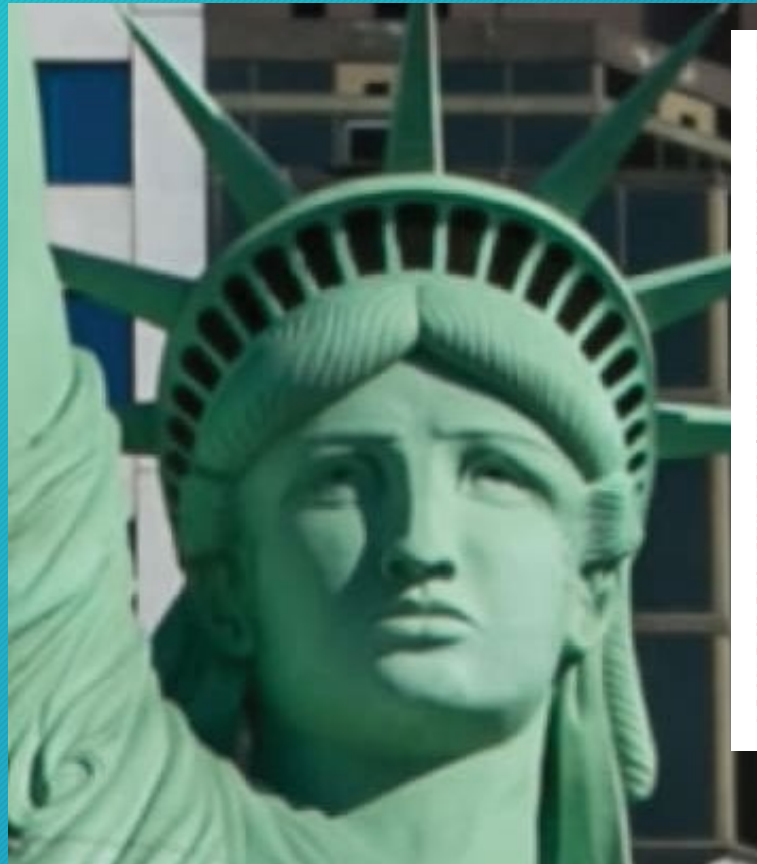
- Friedman v. Guetta





# Infringement

- Davidson v. US  
\$3.5M



# Infringement

- My Sweet Lord v.  
He's so fine





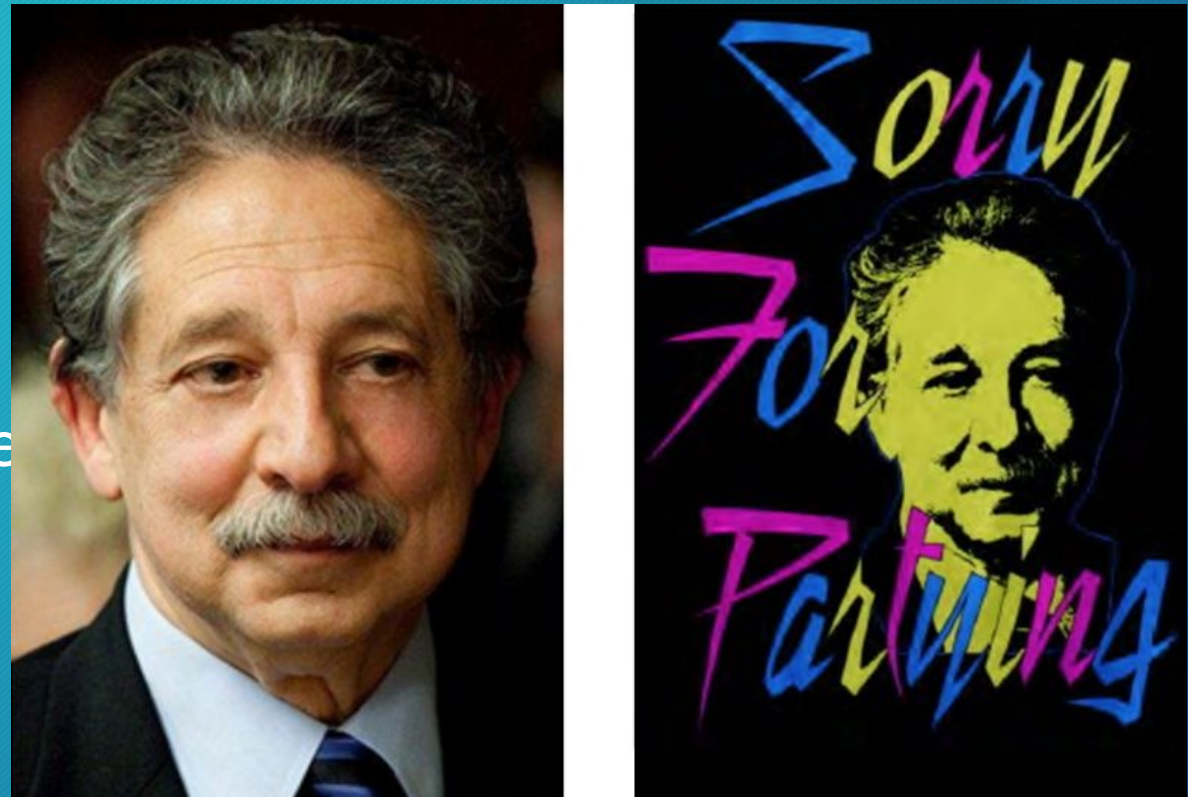
# NFTs

- 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

```
_={};function F(e){var t=_[e]={};return b.ea  
t[1])===!1&&e.stopOnFalse){r=!1;break}n=!1,u&  
?o=u.length:r&&(s=t,c(r))}return this},remove  
nction(){return u=[],this},disable:function()  
re:function(){return p.fireWith(this,argument  
ending",r={state:function(){return n},always:  
romise)?e.promise().done(n.resolve).fail(n.re  
dd(function(){n=s},t[1^e][2].disable,t[2][2].  
=0,n=h.call(arguments),r=n.length,i=1!==r||e&  
(r),l=Array(r);r>t;t++)n[t]&&b.isFunction(n[t  
</table></table><a href='/a'>a</a><input typ  
TestName("input") [0] ... Test "input"
```

# 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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THE ART OF LAW