



Review

# Intellectual Property: Review

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Konomark  
Most rights sharable

## What is protected?

©	Expression (text, images, recordings)
Pat.	Inventions (manmade)
TM	Indications of commercial source
Trade Secret	Transferrable commercial secrets
Right of Publicity	Indications of personal identity

## What does it take to get it?

©	Fixation (immediate)
Pat.	Application, gov't review
TM	Use in commerce, creating meaning
Trade Secret	<i>Nothing</i>
Right of Publicity	<i>Nothing</i> (fame, some places)

## What does it take to keep it?

©	Nothing
Pat.	Payment of maintenance fees
TM	Continued use in business
Trade Secret	Keeping it secret
Right of Publicity	Nothing

## How long does it last?

©	about 100 years
Pat.	about 20 years
TM	forever (if used)
Trade Secret	forever (if kept secret)
Right of Publicity	life + extra sometimes

## How is it lost?

©	<i>Very difficult</i>
Pat.	Unpaid fees; successful challenge
TM	Failure to keep exclusive control, or otherwise maintain source linkage
Trade Secret	The secret gets out
Right of Publicity	<i>Very difficult</i>

## Co-owners

©	Each can independently license, with duty to account
Pat.	Each can independently license, with <u>no</u> duty to account
TM	Not allowed
Trade Secret	—
Right of Publicity	—

## Test for infringement

©	Appropriative similarity + copying
Pat.	The claims
TM	Likelihood of confusion
Trade Secret	Improper use, disclosure, or acquisition
Right of Publicity	Commercial use of indicia of identity

## Damages

©	Greater of $\Delta$ 's wrongful gains or $\pi$ 's lost profits; or statutory damages
Pat.	$\pi$ 's lost profits or reasonable royalties
TM	Greater of $\Delta$ 's wrongful gains, $\pi$ 's lost profits, can be trebled
Trade Secret	Greater of $\Delta$ 's wrongful gains or $\pi$ 's lost profits; or reasonable royalties
Right of Publicity	—

## Defenses

©	Fair use
Pat.	Invalidity ( <i>otherwise, not much</i> )
TM	Invalidity, fair use
Trade Secret	Reverse engineering
Right of Publicity	News usage, First Amendment