



Preliminaries

# The Basic Framework and Initial Questions

# [text tables]

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Konomark  
Most rights sharable

# Copyright ©

<b>Protects</b>	<b>expression (text, images, recordings)</b>
<b>Requires</b>	<b>a mere modicum of creativity</b>
<b>Vests</b>	<b>automatically upon creation</b>
<b>Sustained by</b>	<b><i>[nothing]</i></b>
<b>Lasts</b>	<b>lifetime + 70 years; or 95 years</b>
<b>Theory</b>	<b>incentive to create; public goods problem</b>

# Patent PAT.

<b>Protects</b>	<b>machines, inventions</b>
<b>Requires</b>	<b>some level of cleverness (nonobviousness, inventive step)</b>
<b>Vests</b>	<b>after application, upon issuance by government</b>
<b>Sustained by</b>	<b>escalating maintenance fees</b>
<b>Lasts</b>	<b>up to 20 years</b>
<b>Theory</b>	<b>incentive to invent and disclose; public goods problem</b>

# Trade Secret

<b>Protects</b>	<b>formulas, recipes, manufacturing techniques, and other intangibles with independent economic value</b>
<b>Requires</b>	<b>secrecy and reasonable efforts to keep secret</b>
<b>Vests</b>	<b>automatically</b>
<b>Sustained by</b>	<b>continuing secrecy and efforts to keep secret</b>
<b>Lasts</b>	<b>potentially forever</b>
<b>Theory</b>	<b>? ? ? ?</b>

# Trademark ® TM

<b>Protects</b>	names, logos, slogans, other indications of commercial source
<b>Requires</b>	distinctiveness (can identify a commercial source)
<b>Vests</b>	common law: upon use federal: after use, upon registration
<b>Sustained by</b>	continued use
<b>Lasts</b>	as long as used, potentially forever
<b>Theory</b>	provide information to consumers

# Right of Publicity

<b>Protects</b>	<b>name, voice, image, other indicia of identity</b>
<b>Requires</b>	<b>nothing; fame in a few jurisdictions</b>
<b>Vests</b>	<b>automatically</b>
<b>Sustained by</b>	<b><i>[nothing]</i></b>
<b>Lasts</b>	<b>lifetime; post-mortem in some states</b>
<b>Theory</b>	<b>? ? ? ?</b>

# 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
Trade Secret	The secret gets out
Right of Publicity	<i>Very difficult (?)</i>

# Defenses include ...

©	Fair use, first-sale
Pat.	Invalidity, first-sale
TM	Non-trademark uses, fair uses, first-sale
Trade Secret	Reverse engineering
Right of Publicity	News, free speech, non-commercial

## Remedies include ...

©	Injunctions; restitution (of D's wrongful gains); statutory damages up to \$150K per infringement
Pat.	Injunctions; royalties; treble damages
TM	Injunctions; punitive damages; treble damages
Trade Secret	Injunctions; restitution (of D's wrongful gains); punitive damages; royalties
Right of Publicity	Injunctions; punitive damages